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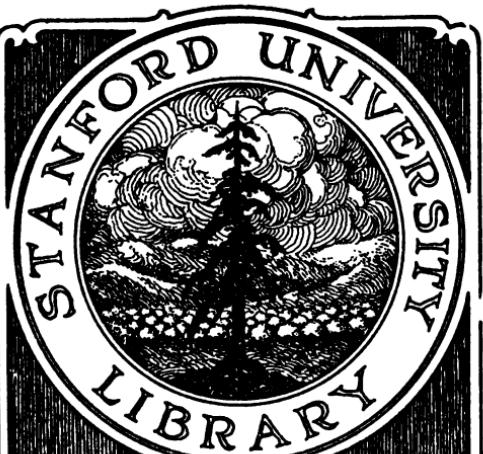
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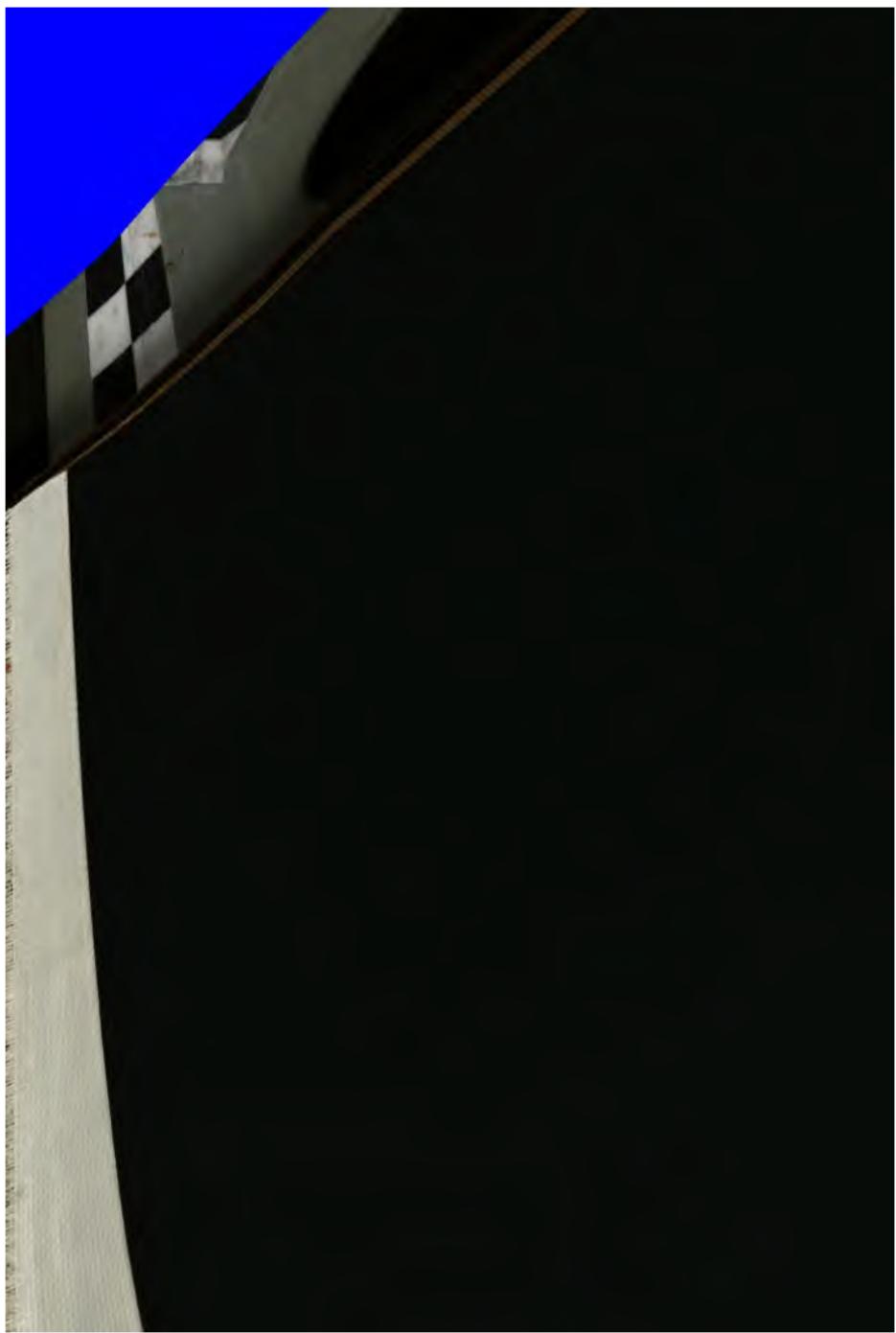
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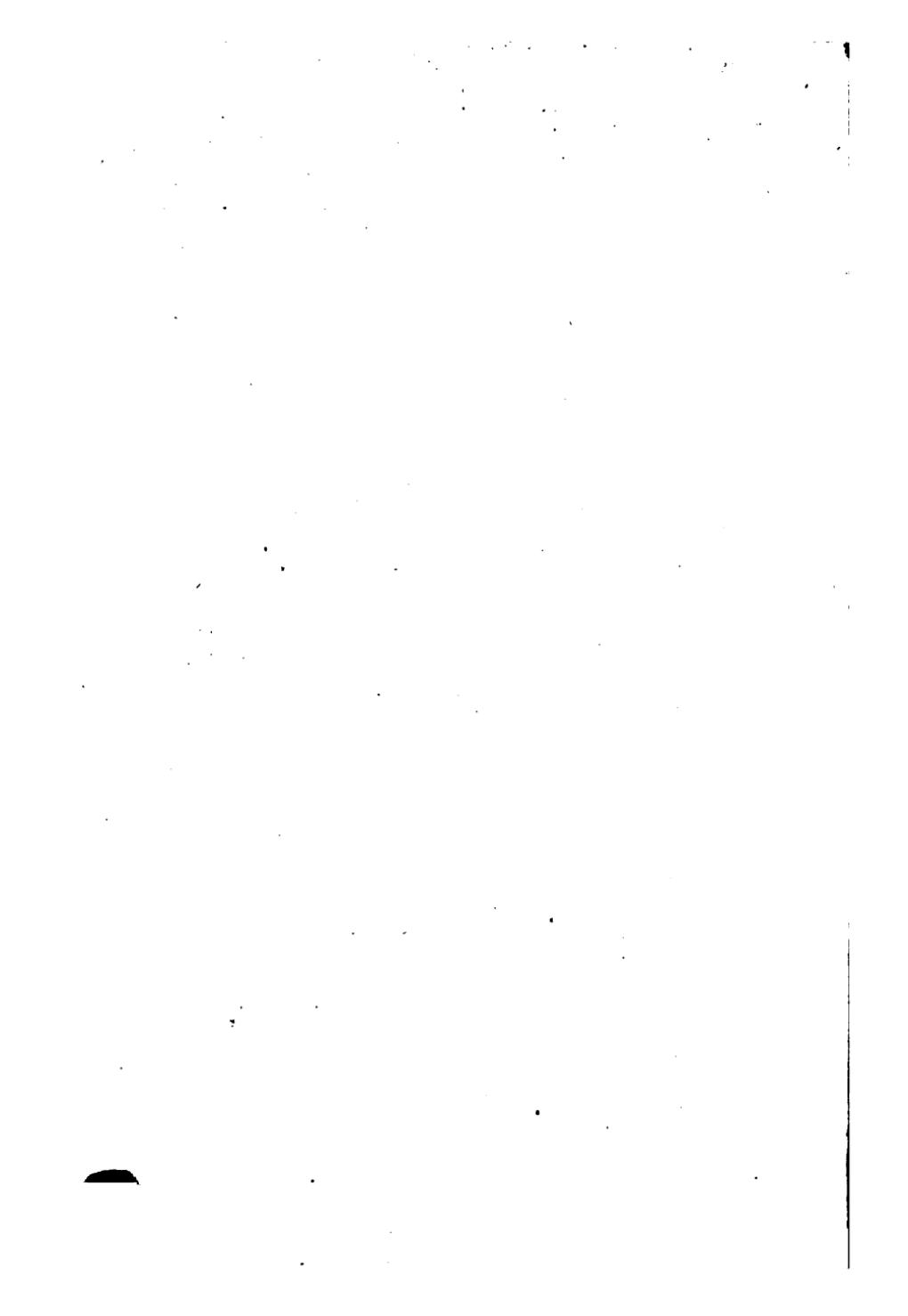
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LAW AND PRACTICE

AS TO

Particulars and Conditions of Sale,

WITH

NOTES AND FORMS:

TO WHICH IS ADDED

"THE VENDOR AND PURCHASER ACT, 1874,"

AND

"THE REAL PROPERTY LIMITATION ACT, 1874."

BY

RICHARD HENRY COLE, Esq., A.K.C.,

OF THE INNER TEMPLE, LONDON, BARRISTER-AT-LAW.

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PREFACE.

THE Forms of Conditions of Sale contained in this Work have been prepared with great care and labour, and it is believed they may safely be relied on. They are intended principally for the use of country solicitors, auctioneers and others concerned as intending vendors or purchasers of real property; but it is hoped they will be found useful to the legal profession and the public generally.

The Author has added two new Statutes —37 & 38 Vict. c. 78 (The Vendor and Purchaser Act, 1874), and 37 & 38 Vict. c. 57 (The Real Property Limitation Act, 1874),—with Notes, with the view of rendering the book more serviceable.

11, OLD SQUARE, LINCOLN'S INN,
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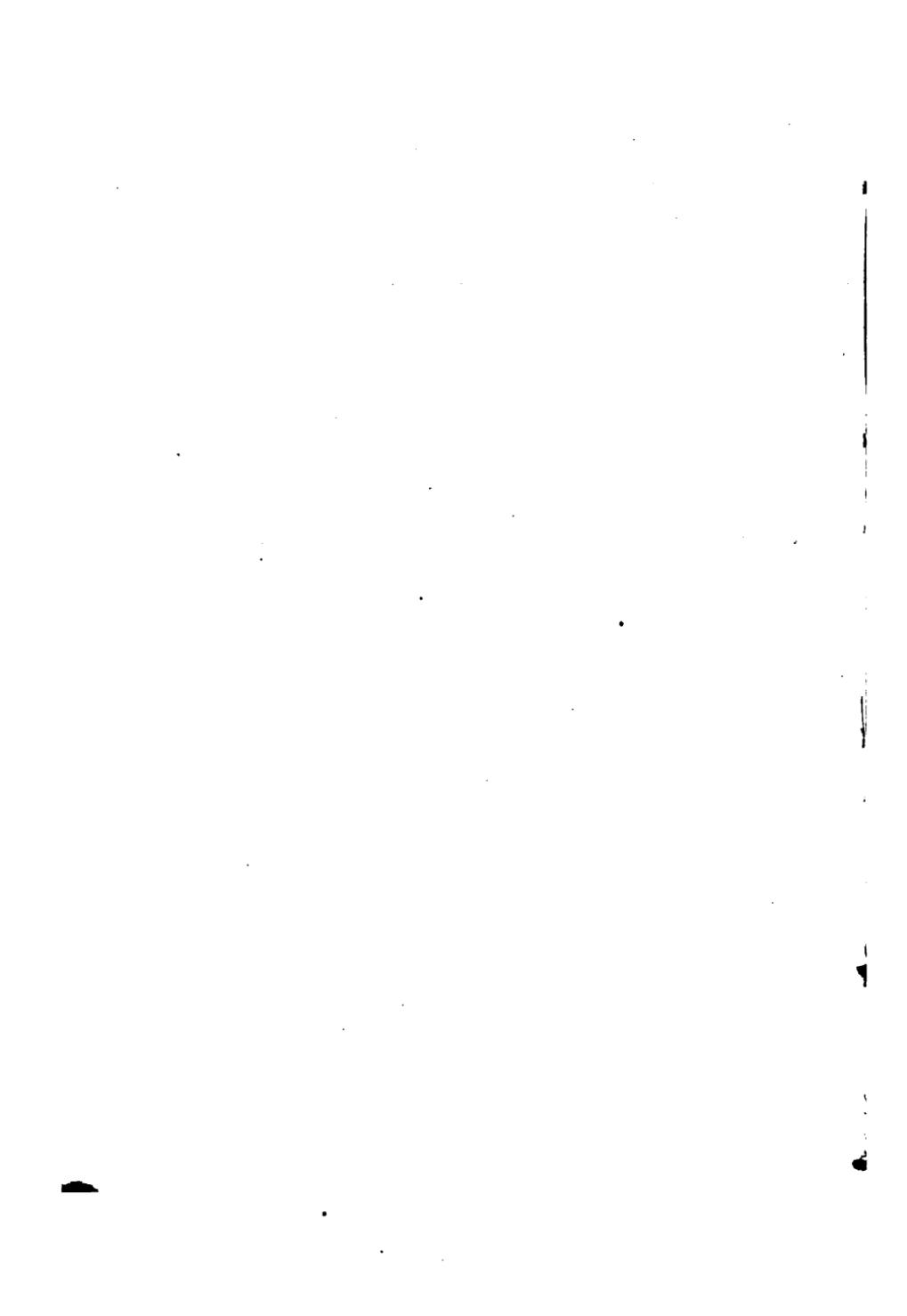


TABLE OF CONTENTS.

	PAGE
TABLE OF CASES	vii
INTRODUCTION	1
PARTICULARS OF SALE	4
CONDITIONS OF SALE	14
FORMS OF CONDITIONS OF SALE	24
1. Sale of Freeholds in one Lot	24
2. Sale of Freeholds (and Copyholds) in several Lots	33
3. Sale of Leaseholds in one Lot	38
4. Sale of Leaseholds in several Lots	43
5. Sale of Freeholds and Leaseholds by order of the Court	50
6. Sale of surplus Lands by a Railway (Dock or other) Company	61
MISCELLANEOUS CONDITIONS	71
<hr/>	
THE VENDOR AND PURCHASER ACT, 1874 (37 & 38 Vict. c. 78), with Notes	75
THE REAL PROPERTY LIMITATION ACT (37 & 38 Vict. c. 57), with Notes	81
<hr/>	
GENERAL INDEX	89



TABLE OF CASES CITED.

	PAGE
Abbott <i>v.</i> Sworder	9
Aberaman Ironworks <i>v.</i> Wickens	11, 30
Bannerman <i>v.</i> Clarke	26
Bardell <i>v.</i> Spinks	16
Bargent <i>v.</i> Thompson	40
Barker <i>v.</i> Cox	30
Barrell, <i>Ex parte</i>	25
Bascombe <i>v.</i> Beckwith	10
Bowman <i>v.</i> Hyland	28
Branding <i>v.</i> Plumer	4
Brookes' Mortgage	78
Brown <i>v.</i> Fenton	6
Buchanan <i>v.</i> Poppleton	76
Burroughs, Lynne and Sexton, <i>In re</i>	80
Caballero <i>v.</i> Henty	13
Calcraft <i>v.</i> Roebuck	25
Carrodus <i>v.</i> Sharp	62
Catling <i>v.</i> King	32
Christie <i>v.</i> Ovington	78
Clarke <i>v.</i> Macintosh	8
Colby <i>v.</i> Gadsden	8
Commins <i>v.</i> Scott	32
Cooper <i>v.</i> Emery	72
Copper Mining Company (Tho) <i>v.</i> Beach	41
Cox <i>v.</i> Middleton	10
Cruse <i>v.</i> Nowell	15
Curling <i>v.</i> Austen	20
Dance <i>v.</i> Goldingham	23
Davis <i>v.</i> Lord Dysart	77
Denny <i>v.</i> Hancock	7
Dimmock <i>v.</i> Hallet	7, 27
Duddell <i>v.</i> Simpson	28

	PAGE
Edgell v. Day ..	25
Edwardes-Wood v. Majoribanks ..	11
Edwards v. Wickwar ..	29
Esdaile v. Stephenson ..	26, 30
Fain v. Ayers ..	77
Falkner v. The Equitable Reversionary Society ..	23, 27, 77
Farebrother v. Gibson ..	8, 18
Fewster v. Turner ..	10
Fife v. Clayton ..	19
Flight v. Booth ..	30
Flowers v. Hartopp ..	29
Freeland v. Pearson ..	28
Garner v. Hannington ..	77
Gilliat v. Gilliat ..	24
Gillibrand v. Goold ..	22
Greaves v. Wilson ..	5, 14, 28
Green v. Baverstock ..	24
Greenwood v. Churchill ..	25, 26
Grove v. Bastard ..	26
Hall v. Smith ..	12
Harnett v. Baker ..	35
Hart v. Swain ..	7
Haywood v. Cope ..	8, 9
Higgins v. Samuel ..	7
Higginson v. Clowes ..	17
Hinton v. Sparkes ..	31
Hobson v. Bell ..	26, 27
Horrocks v. Rigby ..	30
Howell v. Kightley ..	40, 41
Hoys v. Smythies ..	23, 28
Hudson v. Temple ..	26, 27
Hume v. Bentley ..	76
Hyde v. Warden ..	12
Jenkinson v. Pepys ..	17
Jennings v. Broughton ..	8
Johnson v. Smart ..	6
Johnstone v. Barker ..	21
Jones v. Clifford ..	7, 76
Keats v. Earl of Cadogan ..	9

TABLE OF CASES CITED.

ix

	PAGE
Lake v. Dean ..	25
Langford v. Selmes ..	11
Lantsberg v. Collier ..	19
Laws v. Gibson ..	62
Lea v. Whitaker ..	31
Lecoy v. Mogford ..	76
Lempster (Lord) v. Lord Pomfret ..	77
Leyland v. Illingworth ..	30
Long v. Collier ..	29
 Majennis v. Fallon ..	6
Manson v. Tucker ..	7
Marriott v. Anchor Reversionary Society ..	77
Mauser v. Back ..	16, 17
Mawson v. Fletcher ..	28
Mellish v. Motteux ..	9
Metropolitan Railway Company v. Defries ..	26
Minor v. Bettison ..	30
Monroe v. Taylor ..	29
Morgan v. Swansea Urban Sanitary Authority ..	78
Mortimer v. Bell ..	34
Mortlock v. Buller ..	19
Moulton v. Edmonds ..	76
Myers v. Watson ..	10
 Newby v. Paynter ..	30
Norfolk (Duke of) v. Worthy ..	7
 Oakden v. Pike ..	26
Ockenden v. Henley ..	31
 Page v. Bennett ..	40
Paine v. Mellor ..	26
Painter v. Newby ..	28
Palmerston (Lord) v. Turner ..	25, 26
Par v. Lovegrove ..	76
Parker v. Farebrother ..	16
Patrick v. Milner ..	27
Peers v. Ceeleg ..	77
Peyton's Settlement, Re ..	77
Phillips v. Caldcleugh ..	29, 30
____ v. Edwards ..	21
Pope v. Garland ..	10
Poppleton v. Buchanan ..	76
Potter v. Duffield ..	32
Price v. Macaulay ..	27
____ v. North ..	30

TABLE OF CASES CITED.

					PAGE
Randall <i>v.</i> Hall	10				
Rhodes <i>v.</i> Ibbotson	15				
Roberts <i>v.</i> Berry	27				
Robinson <i>v.</i> Briggs	19				
_____ <i>v.</i> Musgrave	30				
Rossiter <i>v.</i> Miller	32				
 Sale <i>v.</i> Lambert	32				
Schnieder <i>v.</i> Heath	9				
Scott <i>v.</i> Hanson	6				
Sellick <i>v.</i> Trevor	29				
Shepherd <i>v.</i> Keatley	29, 76				
Sherwin <i>v.</i> Shaksppear	25				
Shirley <i>v.</i> Stratton	9				
Smith <i>v.</i> Capron	12				
_____ <i>v.</i> Watts	14				
Southby <i>v.</i> Hutt	26				
Stanton <i>v.</i> Tattersall	10				
Stephene <i>v.</i> Hotham	41				
Strangways <i>v.</i> Bishop	4, 7				
Swaisland <i>v.</i> Dearsley	5, 15				
Sykes <i>v.</i> Giles	16				
 Thomas <i>v.</i> Brown	32				
Thornborough <i>v.</i> Baker	78				
Thornett <i>v.</i> Haines	24				
Tildesley <i>v.</i> Clarkson	9				
Tilley <i>v.</i> Thomas	25, 27				
Torrance <i>v.</i> Bolton	3, 18				
Turpin <i>v.</i> Chambers	5, 28				
Tyrconnel (Earl of) <i>v.</i> Duke of Ancaster	39				
 Upperton <i>v.</i> Nicholson	26				
 Waddell <i>v.</i> Wolfe	76				
Ward <i>v.</i> Dickson	27				
Warlow <i>v.</i> Harrison	24				
Wells <i>v.</i> Maxwell	25				
White <i>v.</i> Cuddon	11				
Whittemore <i>v.</i> Whittemore	30				
Williams <i>v.</i> Glenton	26				
_____ <i>v.</i> Jordan	32				
Winter <i>v.</i> Bold	21				
Worley <i>v.</i> Frampton	41				

THE
LAW AND PRACTICE
OF
Particulars and Conditions of Sale.

I.

INTRODUCTION.

LAND is the property in this kingdom most generally sought after, and as a rule commands a higher price than the money return it makes would warrant ; it is obvious therefore that the power to alienate it must often be one of the most vital importance. But although the owner of land has long possessed power to dispose of his interest in it, nevertheless the difficulty of proving the title, of showing the estate to be free from any charges or incumbrances, and of satisfying the almost endless requisitions a purchaser is entitled to make, and which an unwilling or captious purchaser is sure

to insist on, would in many instances render its exercise practically impossible unless protected by Conditions of Sale. It must not be forgotten, however, that the effect of conditions of sale is to take away from a purchaser rights to which he is otherwise entitled, perhaps merely a right to some additional evidence, but perhaps depriving him of material parts of the title, or of the estate itself; and the consequence of unnecessary conditions may be, the silencing of intending bidders, and the sale of the property at an undervalue.

The conveyancer in preparing conditions of sale has to consider what the vendor's estate in the property is, and what evidence there is forthcoming to prove such estate; then, as a prudent traveller preparing for a long journey carefully provides everything that may be necessary, whilst rigorously excluding any superfluity, so the draughtsman, while providing for any objections, or requisitions which the vendor is unable, or unwilling, on account of expense or otherwise, to remove or comply

with, carefully avoids those strict sweeping clauses which very probably would deprive a purchaser of rights which no one objects to his having.

The effect of the acts 37 & 38 Vict. c. 57 and c. 78, is to render it unnecessary to provide for many things which formerly it was imperative to guard against. The forms herewith given are prepared with especial reference to these acts; at the same time precedents require using with more judgment and discrimination in drawing conditions of sale, than in the preparation of any other draught.

Conditions of sale so called are naturally divided into two parts: the Particulars, which are the description of the property sold; and the Stipulations, which declare how the sale shall be conducted, and what title to the property can and is intended to be given (a).

(a) *Torrance v. Bolton*, L. R., 14 Eq. 124; L. R., 8 Ch. 118.

II.

PARTICULARS OF SALE.

FROM the particulars the purchaser learns what is offered for sale; very probably he has no other means of ascertaining accurately what he is about to bid for, and as the law presumes that the vendor knows what he is selling (*a*), if there is any doubt as to their meaning, the Court will adopt the most favourable view for the purchaser. Thus where an undivided moiety of a property was sold by auction, the rental of which was described as being 16*l.* per annum, which was the rental of the whole property, the purchaser asserting that he thought that the 16*l.* was the amount due to the moiety, although he might have discovered his mistake from the rest of the particulars, the Court re-

(*a*) *Brandling v. Plumer*, 2 Drew. 430; *Strangways v. Bishop*, 29 L. T. 120.

fused to grant specific performance (*b*). The particulars are generally prepared by the auctioneer, who, as a rule, can describe in detail the various desirable features and advantages better than the vendor's solicitor or counsel. It is natural for the vendor to give as favourable description as possible of the property he wishes to sell, but he must be fair and accurate; for though the English law adopts the maxim, "simplex commendatione obligat," any material misrepresentation or concealment will enable a purchaser to avoid the sale. It is very difficult to distinguish between mere commendatory statements and actual misrepresentation. The rule appears to be this:—"Mere expressions of opinion will not avoid a sale, but misstatements of facts will." Thus where a house was described as "substantial and convenient," and as "having five bedrooms," when, in fact, the walls in

(*b*) *Swaisland v. Dearsley*, 29 Beav. 430; and see *Beioly v. Carter*, L. R., 4 Ch. 230; *Greaves v. Wilson*, 25 Beav. 290; 4 Jur., N. S. 271; *Turpin v. Chambers*, 29 Beav. 104.

many places were only half a brick thick, and two of the so-called bedrooms mere closets without fireplaces, and without external doors into the lobby, the purchaser was held to his contract (*d*); so also where a piece of land imperfectly watered was described as “uncommonly rich water meadow land” (*e*); though this decision might not now be followed (*f*): and any untrue declaration as to the value have no effect, as the value of a thing is a matter of opinion (*g*). For instance, where leaseholds were described as renewable on payment of a small fine, and almost equal to freehold, though in fact the fine was very considerable (*h*), and a statement that a house is fit for a respectable family, is not to be regarded (*i*). On the other hand, where property was stated to be within a mile of a borough town, when it was be-

(*d*) *Johnson v. Smart*, 2 Giff. 151.

(*e*) *Scott v. Hanson*, 1 Sim. 13.

(*f*) *Dart*, V. & P. 100 (5th ed.).

(*g*) *Sugd. V. & P.* 2 (14th ed.).

(*h*) *Brown v. Fenton*, 14 Ves. 144.

(*i*) *Majennis v. Fallon*, 2 Mol. 561; see also *White v. Cudden*, 5 De Gex, Mac. & G. 107.

tween three and four miles distant (*k*), the purchaser was allowed to rescind; so where there was a considerable deficiency in the acreage (*l*); and where the vendor untruly stated that the house was not damp (*m*), specific performance was refused (*n*). Where a vendor sold copyhold land as freehold, believing it to be so, although the contract was completed, the sale was set aside, it being held that, assuming he had made the representation *bona fide*, he had committed a legal fraud (*o*); but in the absence of fraud, moral or legal, a purchaser cannot obtain compensation, after the conveyance, for a misrepresentation, even though such misrepresentation related to the subject matter of the conveyance, and not merely to the title (*p*). When it appears that the pur-

(*k*) *Duke of Norfolk v. Worthy*, 1 Ca. 337.

(*l*) *Aberman Ironworks v. Wickens*, L. R., 4 Ch. 101.

(*m*) *Strangways v. Bishop*, 29 L. T. 120.

(*n*) And see *Higgins v. Samuel*, 2 J. & H. 460; *Dimmock v. Hallett*, L. R., 2 Ch. 21; *Denny v. Hancock*, L. R., 6 Ch. 1.

(*o*) *Hart v. Swaine*, 7 Ch. D. 42; *Jones v. Clifford*, 3 Ch. D. 779.

(*p*) *Mauson v. Thacker*, 7 Ch. D. 620.

chaser does not altogether rely on the statements made to him, but makes a partial inspection for himself, specific performance will be decreed (*q*), and the purchaser must be actually deceived by the misrepresentations in order to obtain relief (*r*). Where there is no active misrepresentation, but the purchaser complains he was unaware of a defect in the property, and that his attention was not called to it, the case is somewhat different.

According to ancient law, a vendor is bound to point out to a purchaser the defects in the property sold; this rule, however, is not accepted by the law of England in its utmost width. Defects are there divided into two classes—patent defects, and latent defects. Patent defects are such as would be discovered by any one using ordinary vigilance and care, such as a footpath running across a mea-

(*q*) *Haywood v. Cope*, 25 Beav. 14; *Jennings v. Broughton*, 5 De Gex, M. & G. 126; *Clarke v. Mackintosh*, 4 Giff. 134.

(*r*) *Colby v. Gadsden*, 34 Beav. 416; *Farebrother v. Gibson*, 1 De Gex & J. 602.

dow (*s*), or where buildings are in a ruinous state (*t*); in which cases it was held that the vendor was not bound to call the purchaser's attention to the facts, the rule of "caveat emptor" applying. The vendor, however, must not seek to draw away a purchaser's attention from a patent defect, nor try and conceal it (*u*).

Where the defect is latent, that is to say, where the purchaser could not discover it for himself by ordinary care, the vendor is bound to point it out, otherwise the purchaser may refuse to complete the purchase (*v*); but the vendor is not bound to say what offers he has had from other people, nor that the property had been recently valued at a very much smaller sum than the amount of the intended purchase-money (*x*).

When reference is made to a plan which is incorrect, and the purchaser is thereby

(*s*) *Bowles v. Round*, 5 Ves. 508.

(*t*) *Keats v. Earl of Cadogan*, 10 C. B. 591.

(*u*) *Shirley v. Stratton*, 1 B. C. C. 440; 4 Taunt. 785; *Haywood v. Cope*, 25 Beav. 140.

(*v*) *Mellish v. Motteux*, Peake, 115; *Tildesley v. Clarkson*, 30 Beav. 419; *Schnieder v. Heath*, 3 Cam. 506.

(*x*) *Abbott v. Swarder*, 4 De Gex & Sm. 448.

misled, he may refuse to complete (*y*) ; but the fact of various roads being marked out on a plan does not bind the vendor to make them, though it might be a ground for refusing specific performance against a purchaser (*z*) ; at the same time a plan is merely a quasi view of the property, and therefore does not make any agreement that easements represented thereon, such as drains or watercourses, should belong to the purchaser (*a*).

Unless restricted by the context, an agreement to sell land is a contract to sell the fee simple free from incumbrances ; and though if it were shown that the purchaser was not in any way deceived, an action for specific performance might be maintained, it is not sufficient to show that the purchaser might easily have discovered a material misrepresentation (*b*). Where there are not proper powers of distress and

(*y*) *Baskcomb v. Beckwith*, L. R., 8 Eq. 100; *Pope v. Garland*, 4 Yo. & Col. 403.

(*z*) *Myers v. Watson*, 1 Sm., N. S. 523.

(*a*) *Fewster v. Turner*, 6 Jur. 144; *Randall v. Hall*, 4 De Gex & Sm. 343.

(*b*) *Cox v. Middleton*, 2 Drew. 209; *Stanton v. Tattersall*, 1 Sm. & G. 529.

entry in case of non-payment of ground-rent agreed to be sold, the contract may be avoided (*c*), the rule being that property offered for sale is presumed to be accompanied by the legal rights and advantages usually incidental to it. If there are any easements, such as a right of common, or of shooting, or indeed any liability which cannot at once be satisfied, they ought to be mentioned, for otherwise the purchaser will nearly always have a right to compensation, and often, if he desires it, may repudiate the contract. But mere general expressions will not enable a purchaser to contravene well-known rules and customs. A statement that the fines on a certain manor were arbitrary, was held no misrepresentation, though it was shown that those on the admission of a widow to free-bench were certain, inasmuch as they always are (*d*). An agreement to sell land to a railway or a waterworks company,

(*c*) *Langford v. Selmes*, 3 K. & J. 220.

(*d*) *White v. Cuddon*, 8 Cl. & F. 766; *Edwards-Wood v. Majoribanks*, 1 Giff. 384; 7 H. L. Ca. 806.

does not usually include the minerals (*e*). Particular reference need not be made to well-known local customs.

Upon a sale of leaseholds, or of land out on lease, notice of the lease has been held to be notice of its contents (*f*); this doctrine has been carried too far, and there is now a contrary tendency (*g*). In a recent case upon an agreement to grant an underlease, it was decided that the grantees has constructive notice of the provisions of the original lease only when he has had a fair opportunity of ascertaining what they were (*h*). But no person having notice of a lease should buy without having read it. If there is other property comprised in the lease, or the interest is really an underlease, or where there is a covenant to deliver up the premises in good repair at the end of the term, and some of the build-

(*e*) 8 Vict. c. 20, s. 77; 10 Vict. c. 17, s. 18.

(*f*) *Hall v. Smith*, 14 Ves. 426.

(*g*) *Darlington v. Hamilton*, 1 Kay, 550.

(*h*) *Hyde v. Warden*, 3 Ex. D. 72, and *Smith v. Capron*, 7 H. 185, was decided on the same principle, where the lease itself was assigned.

ings have been pulled down, these facts must be mentioned (*i*), and in the case of *Caballero v. Henty* (*k*), it was held a purchaser was not bound to ascertain from a tenant the terms of his tenancy. It is no excuse for a misrepresentation in the particulars that the auctioneer read out the lease at the time of the sale.

(*i*) Dart, V. & P. 109 (4th ed.).

(*k*) L. R., 9 Ch. 447.

III.

CONDITIONS OF SALE.

IT has already been remarked that the particulars of sale are usually drawn by the auctioneer, and he will sometimes prepare the conditions, though this is seldom advisable ; serious consequences often arising, both to the auctioneer and his principal, through the former mistaking the nature of the property sold, or the title to be given therewith.

Conditions of sale must be so expressed as to be clear and intelligible to a man of ordinary understanding ; they must tell him what he is not to require, and what he on his part is expected to do (*a*). The conditions will be construed most strictly against the vendor (*b*). If there be any ambiguity the purchaser may generally

(*a*) *Smith v. Watts*, 4 Drew. 338 ; 28 L. J., Ch. 220.

(*b*) *Greaves v. Wilson*, 25 Beav. 290 ; 27 L. J., Ch. 546.

construe it in the manner most advantageous to himself (*c*), or he may refuse on the ground of such ambiguity to complete his contract (*d*). Where conditions of sale are not drawn *bond fide*, but are intended to cover difficulties arising from facts uncommunicated, they will not preclude a purchaser from taking objection (*e*).

An agreement to sell an estate implies an agreement to give a good title to it. If there is any defect in the title, the purchaser cannot be supposed to discover it before signing the contract; and it is the duty of the vendor, if he wishes to bind the purchaser, to call his attention to it.

The suppression, with intent to defraud, of any deed or instrument material to the title, in order to induce a purchaser to accept a title, is now, by 22 & 23 Vict. c. 35, s. 24, a misdemeanor, and punishable by two years' imprisonment with hard labour.

(*c*) *Rhodes v. Ibbotson*, 4 De Gex, M. & G. 787.

(*d*) *Swaistland v. Dearsley*, 29 Beav. 430.

(*e*) Per M. R., *Cruse v. Nowell*, 2 Jur., N. S. 536.

Distinct Solicitors.—The same solicitor ought not to be employed on both sides (*f*), because notice to an agent is notice to his principal, and the purchaser would be held to have notice of any incumbrances, or any equities, and of any fraud, known to the solicitor of the vendor acting for both parties.

Auctioneers.—A vendor is bound by the acts of his auctioneer (*g*). An auctioneer employed to sell cannot delegate his authority, unless he has special power to do so given him (*h*); and he cannot, unless specially authorized, receive the purchase-money, but only the deposit (*i*). A principal may at any time before it is executed revoke the authority given to the auctioneer (*k*). If there is any loss through the auctioneer omitting to insert proper conditions of sale, or through his not properly describing the property, he will be liable to his principal (*l*).

(*f*) *Sugd. V. & P.* 6 (14th ed.).

(*g*) *Bardell v. Spinks*, 2 Car. & Kir. 646.

(*h*) *Coles v. Trecotthick*, 9 Ves. 250.

(*i*) *Sykes v. Giles*, 5 M. & W. 645.

(*k*) *Manser v. Back*, 5 Ha. 443.

(*l*) *Parker v. Farebrother*, 1 Com. L. R. 323.

The auctioneer must bear in mind that parol evidence is inadmissible on behalf of a plaintiff, whether vendor or purchaser, seeking to enforce a contract. Even the declaration of the auctioneer made at the sale, explaining an ambiguity in one of the conditions, was not received as evidence (*m*); nor where the vendor was plaintiff, was parol evidence admitted, although the defendant had signed an agreement to be bound by the declarations made at the time of the sale (*n*). Where property was put up for auction, and in the particulars which were advertised was described as an immediate absolute reversion of a freehold estate, though the conditions of sale, which were read in the auction-room at the time of the sale, stated that the property was sold subject to three mortgages, yet the purchaser asserting that he did not understand he was buying an equity of redemption, the particulars were held to be misleading, and the sale

(*m*) *Jenkinson v. Pepys*, 6 Ves. 330.

(*n*) *Higginson v. Clowes*, 15 Ves. 516.

set aside (*o*). Where, however, it can be proved that the purchaser thoroughly understood what had been said, the case is different ; thus where premises were stated in the particulars to be "in the occupation of" a company under a lease, and the purchaser asked the vendor's solicitor what names the lease had been granted in, and was told the names of two gentlemen, trustees for the company, the purchaser afterwards refusing to complete, upon the ground that by the particulars the lease appeared to have been granted to the company, and not merely to trustees for the company, the Court ruled he must be held to his bargain (*p*). Parol evidence may be used as a defence to an action for specific performance according to a written agreement, either by vendor or purchaser. When it is necessary to alter the printed particulars or conditions of such sale, the alteration ought to be made in writing and read aloud by the auctioneer before the

(*o*) *Torrance v. Bolton*, L. R., 8 Ch. 118.

(*p*) *Farebrother v. Gibson*, 1 De Gex & J. 602.

sale, and a copy of the particulars and conditions so altered signed by the parties to be bound thereby (*o*) ; where this is done, the agreement will be enforced, although it does not appear that the defendant was aware of the alteration (*p*).

Sales by Trustees.—In the generality of wills and settlements there is either a power of sale, or a trust for sale. In the first instance, where the trustees are directed to reinvest the money arising from the sale in real or certain specified securities, such power should be exercised only if it appears that it will be for the benefit of the trust estate, and not capriciously, or merely to give some collateral advantage to one or more of the cestui que trusts (*q*).

An absolute trust for sale creates a conversion of the property, and the trustee is bound to sell, unless, indeed, the object of the trust is otherwise satisfied (*r*). A tes-

(*o*) *Fife v. Clayton*, 13 Ves. 546.

(*p*) *Manser v. Back*, 6 H. 443.

(*q*) *Robinson v. Brigge*, 1 Sm. & G. 188; *Mortlock v. Buller*, 10 Ves. 291.

(*r*) *Lantsberg v. Collier*, 2 K. & J. 709.

tator gave real and personal estate to trustees upon trust at the decease of his wife "at the sole discretion of my trustees to sell" the same and to divide the proceeds equally among his children, and until such sale, the income was to be divided in the same manner. It was held that the discretion given to the trustees did not apply to the sale itself, but only as to the time or manner of effecting it(*s*). A direction to a trustee to sell "with all convenient speed," or some similar expression, does not compel the trustee to sell at once; but where the testator directs that a sale shall not take place until a certain time, or event, shall have elapsed, or happened, it cannot take place before: thus, where a sale was directed on the death of A. the Court held it had no jurisdiction to order it to take place before the death of A. however beneficial it might be for all parties(*t*).

When trustees are only to exercise the power of sale given to them at the request

(*s*) *Minors v. Battison*, 1 App. Cas. 428.

(*t*) *Johnstone v. Barker*, 8 Beav. 233.

or with the consent of the tenant for life, they must strictly comply with this direction. Thus where power was given to a trustee to lease land at the request in writing of E., and the trustee and E. agreed by parol to grant a lease to the plaintiff, which lease was duly executed by the trustee and E., but E. afterwards refused to assent to it:—Held there was no request in writing by E. and that the plaintiff could not enforce the agreement (*u*).

Where portions are directed to be raised for younger children, the entire amount cannot be raised until all the children are twenty-one (*x*), though slight evidence of a contrary intention will be permitted to prevail. Where under a settlement some portions had become payable the Court ordered the whole sum charged to be raised at once, though some of the children had not acquired vested interests, there being a clause in the settlement that no mortgage should be made until some

(*u*) *Phillips v. Edwards*, 33 Beav. 440.

(*x*) *Wynter v. Bold*, 1 Sm. & S. 507.

one of the portions should become payable (*y*).

The remarks at an earlier portion of this work, as to the general principles on which conditions of sale should be drawn, apply with increased force to sales by trustees; they are bound to use such conditions as are necessary to protect the title, but they will be personally liable for any loss caused by the use of unreasonable stipulations (*z*).

By a deed dated 1858 lands were conveyed to trustees upon the usual trusts for sale. The trustees were unable to find a deed of 1819, through which the conveying parties to the deed of 1858 derived their title; and put up the lands for sale by auction under a condition that the title should commence with the deed of 1858, and that no earlier title should be called for except at the purchaser's expense. The lands were sold at the auction, the object of the condition being explained in

(*y*) *Gillibrand v. Goold*, 5 Sim. 149.

(*z*) Lewin on Trusts, 322, 5th ed.

the auction-room. This condition was held to be calculated to depreciate the property at the auction, and was inserted without any reasonable ground, and the Court granted an injunction to restrain completion, at the suit of a cestui que trust (*a*). But a condition by trustees entitling them to rescind a contract in case they should be unable or unwilling to answer any requisition, though depreciatory in a sense, is not so depreciatory as to be improper, being one that a prudent owner would introduce (*b*).

(*a*) *Dance v. Goldingham*, L. R., 8 Ch. 902.

(*b*) *Falkner v. The Equitable Reversionary Society*, 4 Drew. 352; *Hog v. Smythies*, 22 Beav. 510; 37 & 38 Vict. c. 78, s. 3.

FORMS OF CONDITIONS OF SALE.

No. 1.—FREEHOLDS IN ONE LOT.

1

Conditions of Sale.

1. The highest bidder shall be purchaser; and if any dispute arise relative to any bidding, the auctioneer may determine the same, or put the lot up again at a previous undisputed bidding. No less advance than —l. shall be made, and no bidding shall be retracted (a). The vendor reserves his right to bid by himself or agent (b).

(a) It is usual to put in this clause, but it is doubtful whether it could be enforced. Sugd. V. & P. 14 (14th ed.); Dart, V. & P. 124 (5th ed.).

(b) The practice in equity was to allow the vendor or his agent to bid in order to prevent the property going at an undervalue; not, however, to run up the biddings (*Mortimer v. Bell*, L. R., 1 Ch. 10; 35 L. J., Ch. 25); but at law the employment of a puffer always rendered the sale bad (*Thornett v. Haines*, 15 M. & W. 357; *Green v. Baverstock*, 14 C. B., N. S. 204). It is now enacted by 30 & 31 Vict. c. 48, that wherever the employment of a puffer would render the sale bad at law, it shall also be bad in equity. By sect. 6 the right for the vendor to bid may be reserved; but it must be expressly reserved in so many words, and not merely stated that there is a reserved price (*Gilliat v. Gilliat*, L. R., 9 Eq. 60). Should the sale be stated to be without reserve, the auctioneer personally contracts that such is the case (*Warlow v. Harrison*, 1 E. & E. 295, 316; 29 L. J., Q. B. 14).

2. The purchaser shall, immediately after the sale, pay to the [*auctioneer or vendor's solicitor*] (c) a deposit of [10*l.*] per cent. of his purchase-money (d), and sign the subjoined agreement, and shall complete his purchase, and pay the remainder of his purchase-money at the offices of Messrs. ——, of ——, on the —— day of —— next, on which day he shall be let into possession (e), or into the receipt of the rents and profits

(c) The auctioneer is a depository, and must not part with the deposit until the sale be carried into effect; but the solicitor of the vendor is an agent of, and bound to pay it over to, the vendor on demand (*Edgell v. Day*, L. R., 1 C. P. 80). Should the sale not be completed through the fault of the purchaser, the vendor is entitled to retain the deposit money (*Ex parte Barrell*; *In re Parnell*, L. R., 10 Ch. 512).

(d) The deposit is part payment and not a mere pledge (*Sugd. V. & P.* 50 (14th ed.)). If the deposit be large, it is advisable to provide for its investment; otherwise, should the sale go off, the purchaser is entitled to recover back the amount with interest, and not merely the securities in which it has been invested, and which may have depreciated.

(e) Possession does not necessarily mean personal occupation (*Lake v. Dean*, 28 Beav. 607), though it does as a rule (*Tilley v. Thomas*, L. R., 3 Ch. 61). The condition here is framed to meet either case. Possession means, not merely actual possession, but possession with good title shewn; and if there be any material objection to the title, and the purchaser declines to take possession, he will not be compelled to pay interest (*Wells v. Maxwell*, 32 Beav. 550; *Sherwin v. Shakespear*, 5 De Gex, M. & G. 517). In the absence of any stipulation to the contrary, interest is calculated at the rate of four per cent. (*Calcraft v. Roebuck*, 1 Ves. jun. 221) from the day fixed for completion (*Lord Palmerston v. Turner*, 12 W. R. 876). Interest under the above condition will be payable, though the delay be for years, and the reason of it the state of the title (*Greenwood v. Churchill*, 8 Beav. 413;

of his purchase. And if from any cause whatever the purchase be not then completed, the purchaser thenceforth till completion shall pay interest on the remainder of his purchase-money at the rate of [5*l.*] per cent. per annum (*f*).

3. The vendor will deliver to the purchaser or his solicitor an abstract of title, subject to these conditions (*g*) ; and all objections and requisitions in respect thereof, and of all matters appearing in the abstract, particulars and conditions (if any)

Williams v. Glenton, L. R., 1 Ch. 200). If the vendor remains in possession, the purchaser may be entitled to a fair occupation rent (*Metropolitan Railway Company v. Defries*, 2 Q. B. D. 189, 387).

(*f*) Where there is a time fixed for completion the vendor is entitled to interest, and the purchaser to the rents and profits (*Paine v. Mellor*, 6 Ves. 349; *Grove v. Bastard*, 1 De Gex, M. & G. 69), but not if the delay be occasioned by the vendor (*Esdaile v. Stephenson*, 1 Sim. & Stu. 122); unless there is a clause framed as above, providing that interest shall be paid "if from any cause whatever" the purchase be not completed at the time fixed (*Greenwood v. Churchill*, 8 Beav. 413; *Lord Palmerston v. Turner*, 33 Beav. 524; *Bannerman v. Clarke*, 3 Drew. 632); but not if the delay arises from the wilful default of the vendor (*Williams v. Glenton*, 34 Beav. 528; L. R., 1 Ch. App. 208).

(*g*) An abstract means a perfect abstract, that is to say, a document which states the effect of the various instruments forming the vendor's title (*Oakden v. Pike*, 11 Jur., N. S. 666; *Hobson v. Bell*, 2 Beav. 17; *Upperton v. Nicholson*, 6 Ch. 436). The vendor usually stipulates that he will furnish the abstract within a certain time; but if he does so agree and makes default, he cannot insist on time being deemed of the essence of the contract (*Southby v. Hutt*, 2 M. & C. 211; *Upperton v. Nicholson*, L. R., 6 Ch. 436; *Hudson v. Temple*, 3 L. T., N. S. 495, R.).

shall be delivered in writing at the said offices of Messrs. ——, at ——, within —— days exclusive from the delivery of such abstract, or be considered waived, and in this respect time is to be deemed of the essence of the contract (*h*). If any objection or requisition be delivered as aforesaid, whether a matter of title or conveyance, which the vendor is unable or unwilling to remove or comply with, he shall be at liberty, notwithstanding any attempts to remove or comply with the same or any litigation, to rescind the contract and pay back the deposit, without any interest, compensation or costs (*i*).

(*h*) Time must be expressly declared to be of the essence of the contract (*Roberts v. Berry*, 3 De Gex, M. & G. 284; *Tilley v. Thomas*, L. R., 3 Ch. 67). Upon the sale of a reversion subject to conditions, whereby it was provided that the purchaser should pay a deposit, and the purchase be completed on or before the 17th day of August then next. The purchaser paid a deposit of £30 at the time of sale. The vendors were not able to complete on that day, and the purchaser brought an action to recover back his deposit. There being no express stipulation that time was to be deemed of the essence of the contract, and the vendors being able and willing to complete at the end of November, the purchaser was held not entitled to recover (*Patrick v. Milner*, 2 C. P. D. 342). A condition framed as above will be enforced (*Hudson v. Temple*, 3 L. T., N. S. 495, R.; *Falkner v. Equitable Reversionary Society*, 4 Drew. 352). Fresh objections, however, may be made after the appointed time is past to matters arising from the answers to requisitions made in due time (*Blacklow v. Lawes*, 2 Ha. 40; and see *Warde v. Dickson*, 5 Jur., N. S. 698); and it will not preclude the purchaser from objecting on the ground of misrepresentation (*Price v. Macaulay*, 2 De Gex, M. & G. 339; *Dymock v. Hallett*, L. R., 2 Ch. 21).

(*i*) This clause enables the vendor to rescind the con-

4. The title shall commence with an indenture, dated the — day of —, 18—, and expressed to be made between — and — (k). If there be any outstanding legal estates they shall be got in by, and at the expense of, the purchaser, and no objection shall be made should it be difficult or impossible to get in any outstanding legal estate, nor shall the sale be affected thereby (l). The

tract if the purchaser insists on a requisition with which the vendor, on account of expense or otherwise, is unable or unwilling to comply (*Hoy v. Smythes*, 22 Beav. 510; *Mawson v. Fletcher*, L. R., 6 Ch. 91); but he must answer the requisition (*Turpin v. Chambers*, 30 L. J., Ch. 470). In the case of *Duddell v. Simpson* (L. R., 2 Ch. 102), Lord Cairns says, that in order to constitute a right to rescind four things were necessary: "1. There must be an objection to the title; 2. There must be an inability or unwillingness on the part of the vendor to remove that objection; 3. There must be a communication to the purchaser of the existence of the inability or unwillingness; and 4. There must be an insisting by the purchaser on his objection, notwithstanding this communication." This clause is intended to extend the right of rescinding the contract to other matters which, under the usual form, cannot be done (*Greaves v. Wilson*, 27 L. J., Ch. 546; *Painter v. Newby*, 11 Ha. 26). It will not, however, entitle him to rescind if he fails to show any title whatever (*Bowman v. Hyland*, 8 Ch. D. 588).

(k) *Ante*, p. 15; post, 37 & 38 Vict. c. 78, s. 1.

(l) Where an estate was put up for sale in lots, under conditions which provided that the purchaser should bear the expense of tracing and getting in all outstanding legal estates (if any), it being doubtful whether there were not legal estates outstanding in two persons: Lord Romilly, M. R., said: "I think the vendor should procure them to concur. The expense of doing so is another question, and one which I am not now called upon to decide. I think the notion that the Court of Chancery will compel a purchaser to take an equitable title 'without the legal estate,' is without foundation" (*Freeland v. Pearson*, L. R., 7 Eq. 249).

purchaser shall found no objection or requisition on the prior title, whether or not such title should become known to him through the abstract, or by any other means whatever (*m*).

5. The purchaser shall admit the identity of the property described in the particulars with that comprised in the title deeds (*n*), but the vendor will (if desired) execute, at the purchaser's ex-

It will be observed that the condition is framed with especial reference to this case, the object being to throw the burden, as well as the expense, of getting any outstanding estate on the purchaser.

(*m*) This condition, as a rule, will protect the vendor from being called on to show a clear forty years title; but if the deeds produced, in themselves, show dealing which may affect the property, the purchaser may refuse to complete (*Phillips v. Caldcleugh*, L. R., 4 Q. B. 159; *Sellick v. Trevor*, 11 M. & W. 722); if it be intended to prevent this, the right of the purchaser must be expressly taken away (*Edwards v. Wickwar*, L. R., 1 Eq. 68). The purchaser may show, aliunde, that the title is bad (*Shepherd v. Keatley*, 1 C. M. & R. 117); or that the abstract does not show any title whatever in the vendor (*Sellick v. Trevor*, 11 M. & W. 722; see (*a*), post; 37 & 38 Vict. c. 78, s. 1).

(*n*) A vendor is bound to identify the property sold with that described in the title deeds thereto; but it is usual to stipulate what shall be sufficient evidence. Where the documents differ among themselves, and from the description in the particulars, the above condition might not be sufficient to preclude the purchaser from requiring further evidence (*Flower v. Hartopp*, 6 Beav. 476). The evidence given by the deeds should be complete (*Curling v. Austin*, 2 Dru. & Sm. 129). In the case of copyholds however the description on the court rolls need not be reconciled with the actual state of the property (*Long v. Collier*, 4 Russ. 267); the vendor would otherwise be obliged to distinguish the boundaries (*Monro v. Taylor*, 8 Ha. 57).

pense, a declaration that such property has been held under such title for twelve years. The ad-measurement shall be presumed to be correct, but for any other error in the particulars compensation shall be allowed or given (o).

6. The production, or any abstract, of all or any muniments of title not in the vendor's possession, which the purchaser may be entitled to require, and all attested or other copies of, or extracts from, any rolls, registers, deeds, wills or other documents, whether in the possession of the vendor or not, and all declarations, certificates and other evidence required for the completion of the title, identification of the property, verification of the

(o) The compensation clause applies where the error is slight (*Flight v. Booth*, 1 B. N. C. 370; *Leyland v. Illingworth*, 2 De G., F. & J. 248); not where the deficiency is large (*Aberman Ironworks v. Wickens*, L. R., 4 Ch. 101; *Price v. North*, 2 Y. & C., Ex. 620); but it seldom applies in cases of misdescription of title or interest (*Phillips v. Caldcleugh*, L. R., 4 Q. B. 159); or where the description is given malā fide (*Robinson v. Musgrave*, 2 M. & R. 93). It is not possible to exclude the right to compensation, for it is the vendor's duty to describe the property correctly (*Whittemore v. Whittemore*, L. R., 8 Eq. 603). The purchaser, in cases of misdescription, may generally have what the vendor can give, with compensation for what he cannot (*Esdaile v. Stephenson*, 1 Sim. & Stu. 122; *Newby v. Paynter*, 17 Jur. 483; *Barker v. Cox*, 4 Ch. D. 464). Where two persons agreed to sell a property, of whom one was entitled to a moiety, subject to a mortgage for its full value, and the other had no interest:—Held, that a judgment for specific performance with abatement might be made against the former (*Horrocks v. Rigby*, 9 Ch. D. 180).

abstract or otherwise, and all searches, journeys and other expenses incidental to the above purposes, or any of them, shall be borne by the purchaser (*p*).

7. If the purchaser shall fail to comply with any of the above conditions, the vendor shall be at liberty to vacate the sale, forfeit the deposit and resell the property, either by public auction, or by private contract, subject to such conditions and stipulations as he may think fit, with or without giving any notice to such purchaser; and all expenses incidental to such resale, and any deficiency in price, shall be recoverable from the purchaser by the vendor as and for liquidated damages (*q*).

(*p*) This condition is comprehensive in the extreme, and is of great importance, as the requisitions which, in its absence, might be made are almost endless. Such evidence as the vendor has in his possession must be produced; but in all probability it would be but a small portion of what a purchaser, insisting on his strict legal rights, might demand.

(*q*) This condition is drawn with special reference to the numerous cases on the subject of penalty or liquidated damages (see *Hinton v. Sparkes*, L. R., 3 Eq. 161; *Lea v. Whitaker*, L. R., 8 Eq. 70). Under the present condition a purchaser making default would lose his deposit, whether there were any loss or not upon a resale; but in an action by the vendor to recover loss attendant on a resale, he must bring the deposit in account (*Ockenden v. Henley*, 27 L. J., Q. B. 261).

MEMORANDUM OF CONTRACT, dated the —— day
of —— 18—.

I, the undersigned E. F. [*the auctioneer*], as agent for and on behalf of A. B., the vendor, do hereby acknowledge to have *sold*, and *I, the undersigned C. D. [purchaser]* of ——, do hereby acknowledge to have purchased, the property described in the annexed particulars [Lot], at the price of ——l., subject to the foregoing conditions by which each party agrees to be bound.

Purchase-money £ : :
Deposit money received . . £ : : _____

Amount remaining to be paid £ : :

Abstract of title to be sent to ——,
of —— [*the purchaser's solicitor*].

(Signed) E. F. [*auctioneer and agent
for vendor*] (s).
C. D. [*the purchaser*].

(s) The vendor must be specified either nominally or by a sufficient description, but when possible his name should appear in the agreement (*Sale v. Lambert*, L. R., 18 Eq. 1; *Potter v. Duffield*, L. R., 18 Eq. 4; *Commins v. Scott*, L. R., 20 Eq. 11; *Williams v. Jordan*, W. N., 1877, July, 182; see contra, *Rossiter v. Miller*, 5 Ch. D. 648; 3 App. Cas. 1124; *Thomas v. Brown*, 1 Q. B. D. 714). A vendor not named, but stated to be "a trustee selling under a trust for sale," is sufficient within the Statute of Frauds (*Catling v. King*, 5 Ch. D. 660).

No. 2.—FREEHOLDS [AND COPYHOLDS]
IN LOTS.

Conditions of Sale.

1. The highest bidder for each lot shall be purchaser, and if any dispute arise relative to any bidding, the auctioneer may determine the same, or put the lot up again at a previous undisputed bidding. No bidding shall be retracted (a), and no less advance made than a sum fixed by the auctioneer at the sale. The vendor reserves his right to bid by himself or agent for each lot (b).
2. Each purchaser shall, immediately after the sale, pay to the [auctioneer or to vendor's solicitor] (c) a deposit of [10*l.*] per cent. of his purchase-money (d), sign the subjoined agreement, and shall complete his purchase, and pay the remainder of his purchase-money and the sum fixed under the — condition of sale, at the office of Messrs. —, of No. —, on the — day of — next, on which day he shall be let into possession, or into the receipts of the rents

(a) Ante, 24, (a).
(b) Ante, 24, (b).

(c) Ante, 25, (c).
(d) Ante, 25, (d).

C.

D

34 FORMS OF CONDITIONS OF SALE.

and profits of his purchase (e), and if from any cause whatever the purchase be not then completed, the purchaser shall thenceforth till completion pay interest on the remainder of his purchase-money, and the sum awarded by the valuation hereafter mentioned in condition —, at the rate of 5*l.* per cent. per annum (f).

3. The vendors shall deliver to each purchaser, or his solicitor, an abstract of the title of the lot or lots purchased by him subject to these conditions (g), and all objections and requisitions in respect thereof, and of all matters appearing in the abstract, particulars and conditions (if any), shall be delivered in writing at the said office of Messrs. —— within —— days from the delivery of such abstract, or be considered waived, and in this respect time is to be deemed of the essence of the contract (h). If any objection or requisition be delivered as aforesaid, whether a matter of title or conveyance, which the vendors are unable or unwilling to remove or comply with, they shall be at liberty, notwithstanding any attempts to remove or comply with the same, or any litigation, to rescind the contract and pay back the deposit without any interest, compensation or costs (i).

(e) Ante, 25, (e).
(f) Ante, 26, (f').
(g) Ante, 26, (g).

(h) Ante, 27, (h).
(i) Ante, 27, (i).

FREEHOLDS AND COPYHOLDS IN LOTS. 35

4. The title shall commence as to Lots 1 and 2 with the will of John Smith, who is believed, and shall be assumed, to have died seised thereof for an estate in fee simple in possession free from incumbrances (*k*) ; and as to Lots 3, 4, and 5, with the admittance on the — day of — of the said John Smith. And no purchaser shall found any objection or requisition on the prior title of any lot, whether or not such title should become known to him through the abstract, or by any other means whatsoever (*l*).

5. The respective purchasers shall take the fixtures, timber and other trees, tellers, pollards and saplings, down to one shilling per stick, and the coppice, underwood and plantations at their fair value.

6. No purchaser shall require the vendor to identify any lot described in the particulars of sale with the property comprised in the title deeds thereto [*nor require the vendor to ascertain or define any boundaries of any manors*], nor ground any objection thereon (*m*), nor to distinguish between the freehold and copyhold parts ; but the vendor will (if desired) execute, at the purchaser's ex-

(*k*) Special conditions of sale must not be framed for the purpose of entrapping a purchaser, and they must not be founded on any erroneous statement of fact (*Harnett v. Baker*, L. R., 20 Eq. 50; ante, 15.

(*l*) *Ante*, 29, (*m*).

(*m*) *Ante*, 29, (*n*).

36 FORMS OF CONDITIONS OF SALE.

pense, a declaration that such lot has been held under such title for twelve years. Each lot is believed to be correctly described, but if there be any error or omission in the particulars, it shall not affect the sale, nor shall any compensation be allowed or given (*n*). The respective purchasers of each lot shall prepare at their own expense, and the vendors will execute, all proper conveyances, surrenders and assurances for the conveying, surrendering and assuring of the same, such assurances to be left at the office of Messrs. —, at —, at least seven days before the day fixed for the completion of the purchase (*o*).

7. The production, or any abstract, of all or any muniments of title not in the vendor's possession, which the purchaser of any lot may be entitled to require, and all attested and other copies of, or extracts from, any rolls, registers, deeds, wills or other documents, whether in the possession of the vendor or not, and all declarations, certificates and other evidence required for the completion of the title [*identification of the property*], verification of the abstract, or otherwise, and all searches, journeys and other expenses incidental to the above purposes, or any of them, shall be borne by the purchaser (*p*).

8. If the purchaser of any lot shall fail to comply with any of the above conditions, the

(*n*) Ante, 30, (*o*). (*o*) Post, 44, (*c*). (*p*) Ante, 31, (*p*).

FREEHOLDS AND COPYHOLDS IN LOTS. 37

vendor shall be at liberty to vacate the sale, forfeit the deposit, and resell such lot, either by public auction or private contract, subject to such conditions and stipulations as the vendor may think fit, with or without giving any notice to such purchaser; and all expenses incidental to such resale, and any deficiency in price, shall be recoverable from the purchaser by the vendor as and for liquidated damages (q).

MEMORANDUM OF CONTRACT OF SALE, dated, &c.,
[as ante, 32].

(q) Ante, 31, (r).

No. 3.—LEASEHOLDS IN ONE LOT.

Conditions of Sale.

1. The highest bidder shall be purchaser, and if any dispute arise relative to any bidding the auctioneer may determine the same, or put the lot up again at a previous undisputed bidding. No less advance than £— shall be made, and no bidding shall be retracted (a). The vendor reserves his right to bid by himself or agent (b).
2. The purchaser shall, immediately after the sale, pay to the [*auctioneer or vendor's solicitor*] (c) a deposit of [£10] per cent. of his purchase-money (d), and sign the subjoined agreement, and shall complete his purchase and pay the remainder of his purchase-money at the office of Messrs. —, at —, on the — day of — next (e), on which day the purchaser shall be let into possession (f), or into the receipts of the rents and profits of his purchase. Up to such day the pos-

(a) *Ante*, 24, (a).(b) *Ante*, 24, (b).(c) *Ante*, 25, (c).(d) *Ante*, 25, (d).

(e) Be careful to fix a convenient day, one of the usual quarter days.

(f) *Ante*, 25, (e).

session or the rents and profits will be held or received, and all outgoings (*g*), other than those payable by the tenants, satisfied by the vendors. The purchaser shall take the tenants' fixtures at a sum mutually agreed on or fixed by a fair valuation. And if from any cause whatever the purchase be not completed on the day in that behalf above mentioned, the purchaser shall thenceforth, till completion, pay interest on his purchase-money and on the sum fixed for the tenants' fixtures, at the rate of [10*l.*] per cent. per annum (*h*).

3. The vendor shall deliver to the purchaser, or his solicitor, an abstract of title subject to these conditions (*i*), and all objections and requisitions in respect thereof, and of all matters appearing in the abstract, particulars and conditions (if any) shall be delivered in writing at the office of Messrs. ——, at ——, within —— days from the delivery of such abstract, or be considered waived; and, in this respect, time is to be deemed of the essence of the contract (*k*). If any objection or requisition be delivered as aforesaid, whether a matter of title or conveyance, with which the vendor is unable or unwilling to remove or comply with, he shall be at liberty, notwithstanding

(*g*) *Earl of Tyrconnel v. Duke of Ancaster*, 2 Ves. sen. 503.

(*h*) *Ante*, 26, (*f*).

(*i*) *Ante*, 26, (*g*).

(*k*) *Ante*, 27, (*h*).

40 FORMS OF CONDITIONS OF SALE.

any attempts to remove or comply with the same, or any litigation, to rescind the contract and pay back the deposit, without any interest, compensation or costs (*l*).

4. The title shall commence with the original lease, dated —, and expressed to be made between A. B. and C. D., a copy of which will be produced at the sale (*m*) ; and the receipt for the rent last payable under such lease shall be conclusive evidence of the due performance and observance of or waiver of any breach of the covenants and conditions contained therein (*n*) up to the completion of the sale (*o*).

5. The purchaser shall admit the identity of the property described in the particulars with that comprised in the title deeds (*p*), but the vendor will (if desired) execute or procure, at the purchaser's expense, a declaration that such property

(*l*) *Ante*, 27, (*i*).

(*m*) *Ante*, 12.

(*n*) *Post*, 46.

(*o*) This condition would be sufficient to cover any breach up to the time of the sale, unless indeed a landlord had given notice of his intention to take advantage of a forfeiture incurred; but it is doubtful whether a continuing breach of covenant could be provided for except by calling direct attention to it, and stating that it was not intended to remedy it (*Howell v. Kightley*, 21 Beav. 331); but see clause 4, post, 46; as to relief for non-insurance (see 22 & 23 Vict. c. 35; *Page v. Bennett*, 1 Giff. 117; *Bargent v. Thompson*, 4 Giff. 473).

(*p*) *Ante*, 29, (*n*).

has always been held under such title since the granting of the above-mentioned lease. The ad-measurement shall be presumed to be correct, and no compensation shall be allowed or given for any error, omission or miscalculation, nor shall the sale be affected by the same (*q*). The purchaser shall prepare, and on the completion of the purchase the vendor shall execute, all such assurances necessary to assign the premises to the purchaser, and execute and do, at the purchaser's expense, all assurances and things (if any be required) for getting in and extinguishing any outstanding estate or interest, or any other purpose whatever; every such assurance to be left at the said office of Messrs. ——, at ——, not less than [*ten*] days before the aforesaid —— day of —— next.

6. The vendor is a trustee [*mortgagee*], and shall only be required to covenant that he has done no act to incumber. The concurrence of the parties beneficially interested shall not be required (*r*).

7. The production of any muniments of title not in the vendor's possession, which the purchaser may be entitled to require, and all attested or other copies of, or extracts from, any rolls, registers,

(*q*) *Ante*, 30, (*o*).

(*r*) *Worley v. Frampton*, 6 H. 560; *The Copper Mining Company v. Beach*, 13 Beav. 478; *Howell v. Kightley*, 21 Beav. 331; *Stephens v. Hotham*, 1 K. & J. 571.

42 FORMS OF CONDITIONS OF SALE.

deeds, wills or other documents, whether in the possession of the vendors or not, and all declarations, certificates and other evidence required for the completion of the title, identification of the property, verification of the abstract, or otherwise, and all searches, journeys and other expenses incidental to the above purposes, or any of them, shall be borne by the purchaser (s).

8. If the purchaser shall fail to comply with any of the above conditions, the vendor shall be at liberty to vacate the sale, forfeit the deposit, and resell the property, either by public auction or by private contract, subject to such conditions and stipulations as he may think fit, with or without giving any notice to such purchaser; and all expenses incidental to such resale, and any deficiency in price, shall be recoverable from the purchaser by the vendor as and for liquidated damages (t).

MEMORANDUM OF CONTRACT OF SALE, dated, &c.,
[as ante, 32].

(s) Ante, 31, (p).

(t) Ante, 31, (r).

No. 4.—LEASEHOLDS IN LOTS.

Conditions of Sale.

1. The highest bidder for each lot shall be purchaser, and if any dispute arise relative to any bidding, the auctioneer may determine the same, or put the lot up again at a previous undisputed bidding. No bidding shall be retracted (a), and no less advance made than a sum fixed by the auctioneer at the time of sale. The vendor reserves his right to bid by himself or agent for each lot (b).

2. Each purchaser shall, immediately after the sale, pay to the [*auctioneer or vendor's solicitor*] a deposit of [£10] per cent. of his purchase-money (c), and sign the subjoined agreement; and shall complete his purchase, and pay the remainder of his purchase-money at the office of Messrs. ——, the vendor's solicitors, at ——, on the —— day of —— next (d), on which day the purchaser shall be let into possession (e), or into

(a) *Ante*, 24, (a).

(b) *Ante*, 24, (b).

(c) *Ante*, 25, (d).

(d) Be careful to fix a convenient day, one of the usual quarter days.

(e) *Ante*, 25, (e).

44 FORMS OF CONDITIONS OF SALE.

the receipt of the rents and profits of his purchase. Up to such day the possession or the rents and profits will be held or received, and all outgoings, other than those payable by the tenants, satisfied by the vendor. [The purchaser of any lot shall take the tenants' fixtures thereon at a sum mutually agreed on or fixed by a fair valuation.] And if from any cause whatever the purchase be not then completed, the purchaser shall thenceforth, till completion, pay interest on his purchase-money [and on the sum fixed for the tenants' fixtures], at the rate of [£10] per centum per annum (b).

3. The vendor will deliver to each purchaser, whose purchase-money for any lot shall amount to £— or more, or to his solicitor, an abstract, subject to these conditions, of the title to such lot, but no purchaser purchasing more than one lot held under the same title shall be entitled to more than one abstract (c). Those purchasers whose purchase-money shall not respectively amount to £—, or their solicitor, may, after — days from the day of sale, and before the — day of — next, between the hours of eleven in the morning and five in the afternoon

(b) *Ante*, 26 (f).

(c) Where a purchaser buys several lots under the same title, it is the better opinion that, in the absence of a stipulation to the contrary, he is entitled to an abstract for each lot, and indeed to a separate conveyance of each lot; but as the expense of the latter falls on the purchaser, it is unnecessary in practice to provide against it.

on any week day, inspect an abstract, in accordance with these conditions, of the vendor's title, at the office of Messrs. ——, at ——, and may, at their own expense, have a copy of or extract from such abstract. And all objections and requisitions in respect thereof, and of all matters appearing in the abstract, particulars and conditions (if any), shall be delivered in writing at the office of Messrs. —— within —— days from the actual delivery or inspection of the abstract (*d*) by the purchaser or his solicitor, or be considered waived, and in this respect time is to be deemed of the essence of the contract (*e*). If any objection or requisition be delivered as aforesaid, whether a matter of conveyance or title, which the vendor is unable or unwilling to remove or comply with, he shall be at liberty, notwithstanding any attempts to remove or comply with the same, or any litigation, to rescind the contract and pay back the deposit, without any interest, compensation or costs (*f*).

4. The title as to Lot 1 shall commence with the original lease, and no objection or requisition shall be made on the ground that the covenants and conditions contained in the existing underleases differ from the covenants and conditions contained in the said lease. The title as to Lots 2, 3, and 4 shall commence with an underlease, dated

(*d*) Ante, 26, (*g*). (*e*) Ante, 27, (*h*). (*f*) Ante, 27, (*i*).

the —— day of ——, 18—, and no objection to either of these lots shall be made on the ground that the original lease comprised other property besides that contained in the said underlease. Copies of the leases and underleases will be produced at the time of sale. The title as to Lots 5, 6, and 7 shall commence with a copy of the abstract, beginning with the original lease granted by A. B. to C. D., dated the —— day of ——, 18—, delivered to the vendor on his purchase in 18—, and such copy abstract shall be deemed conclusive evidence, without any verification, as to the title contained therein. The receipt for the rent last payable under any lease or underlease respectively shall be conclusive evidence of the performance and observance of, or waiver of any breach in the covenants and conditions contained therein; and where any breach shall be taken as waived under the present condition, no objection shall be made by reason of any continuing breach of the same or the like covenant or condition for the period subsequent to such last receipt for rent up to the completion of the purchase (g).

5. Lots 2, 3, and 4 shall be assigned to the purchaser of Lot 2, subject to the rent and covenants in the existing underlease reserved and con-

(g) *Ante*, 40, (o). This clause is taken from the conditions of sale in the case of *Wilkinson v. Gowans* (1872, W. 194).

tained, who shall grant underleases of Lots 3 and 4 to the respective purchasers thereof at a peppercorn rent for the entire term, minus the last day of it. The said purchaser of Lot 2 to covenant in such underleases that he will pay the rent and perform the covenants contained in the said underlease; the vendor's solicitor, in case of dispute about such underleases, finally to settle the same. The purchasers of Lots 3 and 4 to deliver, at their own expense, to the purchaser of Lot 2 a counterpart of their respective underleases.

6. Lots 5, 6, and 7 are held under the same lease at the rent of £—, and the respective purchasers shall, at their own expense, enter into the usual covenants, and give the usual indemnities, to the other purchasers for the payment of the share of such rent in the particulars apportioned to their respective lots, and for the due performance of the covenants and conditions affecting the same respectively.

7. In case any lot remains unsold, the vendor for these purposes shall be considered a purchaser. Subject to any rights of the vendor to retain, the respective purchasers of the largest lot held under a common title shall be entitled to all the muniments of title relating to such lot, and shall, at the expense of any purchaser requiring the same, enter into the usual covenants to produce and furnish copies thereof.

48 FORMS OF CONDITIONS OF SALE.

8. No purchaser shall require the vendor to identify any lot described in the particulars of sale with the property comprised in the title deeds thereto, but the vendor will (if desired) execute or procure, at the purchaser's expense, a declaration that, with respect to Lots 3, 6 and 7, such lots have been held under such title for — years, and with respect to the other lots, that they have been held under such title since the execution of the instrument stipulated to be the root of title to such lots.

9. The admeasurement shall be presumed to be correct, and no compensation shall be allowed or given for any error, omission or miscalculation, nor shall the sale be affected by the same.

10. The purchaser of each lot shall prepare, at his own expense, and the vendor shall execute, all such assurances necessary to assign the different lots to their respective purchasers, and execute and do, at the expense of the purchaser requiring the same, all assurances and things (if any be required) for getting in and extinguishing any outstanding estate or interest or any other purpose whatever; every such assurance to be left at the said office of Messrs. — not less than ten days before the aforesaid — day of — next (h).

(h) In case the sale be by a trustee or a mortgagee, see clause 6, p. 41.

11. The production, or any abstract of, all or any muniments of title not in the vendor's possession, which the purchaser of any lot may be entitled to require, and all attested or other copies of, or extracts from, any rolls, registers, deeds, wills, or other documents, whether in the possession of the vendor or not, and all declarations, certificates, and other evidence required for the completion of the title, identification of the property, verification of the abstract or otherwise, and all searches, journeys and other expenses incidental to the above purposes, or any of them, shall be borne by the purchaser (i).

12. If the purchaser of any lot shall fail to comply with any of the above conditions, the vendor shall be at liberty to vacate the sale, forfeit the deposit and resell such lot, either by public auction or private contract, subject to such conditions and stipulations as the vendor may think fit, with or without giving any notice to such purchaser; and all expenses incidental to such resale, and any deficiency in price, shall be recoverable from the purchaser by the vendor as and for liquidated damages (k).

MEMORANDUM OF CONTRACT OF SALE, dated, &c.,
[as ante, 32].

(i) Ante, 31, (p).

(k) Ante, 31, (q).

C.

E

No. 5.—FREEHOLDS AND LEASEHOLDS SOLD
IN A CAUSE UNDER THE DIRECTION OF
THE HIGH COURT OF JUSTICE, CHANCERY
DIVISION (*a*).

Conditions of Sale.

1. No person to advance less than £5 at each bidding.
2. The sale is subject to a reserved bidding for each lot, which has been fixed by the judge to whose Court this cause is attached.
3. Each purchaser at the time of sale to subscribe his name and address to his bidding in the bidding paper; and the abstract of title and all written notices, and communications and summonses, are to be deemed duly delivered to, and served upon the purchaser, by being left for him at such address, unless or until he is represented by a solicitor.

(*a*) This precedent is framed from the conditions used in the case of *Martin v. Clugny*, which were settled by Mr. Dart, and those used in the case of *Wilkinson v. Gowans* (1872, W. 194). The first five clauses are given in Davidson's Precedents and Forms in Conveyancing, vol. 1, 2nd ed., whose forms indeed appear to have been used as a groundwork in both cases. The Settled Estates Act, 1877 (40 & 41 Vict. c. 18).

4. Each purchaser is at the time of sale to pay a deposit of £10 per cent. on the amount of his purchase-money to Mr. A. B., the auctioneer, the person appointed by the said judge to receive the same (b).

5. The chief clerk of the said judge will, after the sale, proceed to certify the result; and —, the — day of —, 187 , at twelve o'clock at noon, is appointed as the time at which purchasers may, if they think fit, attend by their solicitors, at the chambers of the Vice-Chancellor [Sir James Bacon, acting for the Master of the Rolls], at his chambers [in 11, New Square, Lincoln's Inn], in the county of Middlesex, to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding, without further notice or expense to the purchasers.

6. The vendors will, within four days after such certificate has become binding, deliver to each purchaser, or his solicitor, an abstract of the title to the lot purchased by him, subject to the stipulations contained in these conditions. And each purchaser is, within fourteen days after the actual delivery of the abstract, to deliver at the office of Messrs. —, the vendors' solicitors, at No. —,

(b) It is not usual to require a deposit; but when required the person appointed to receive it must give security (Dart, V. & P. 1085, 4th ed.).

—, in the county of Middlesex, a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract, or the form of, or parties to, the conveyance; and upon the expiration of such last-mentioned time any objection is to be considered waived, and the title approved of and accepted by such purchaser, subject only to such objections and requisitions (if any), and in this respect time is to be deemed of the essence of the contract.

7. Each purchaser is under an order for that purpose, to be obtained by him, or, in case of his neglect, by the vendors at the cost of the purchaser, upon application at the chambers of the said judge, to pay the amount of his purchase-money (after deducting the deposit) into Court to the credit of the said cause [“W. v. G. 187—, W. 194”] to an account entitled [“Proceeds of the sale of the testatrix’s real and leasehold estate”], on or before the — day of —, 187—; and if the same is not so paid, then the purchaser is to pay interest on the balance of his purchase-money at the rate of £5 per cent. per annum from the said — day of —, 187—, to the day on which the same is actually paid. Upon payment of his purchase-money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the said — day of —, 187—, down to which time all outgoings are to be paid by the vendors, and all current

rents and profits and current outgoings shall be apportioned for the purpose of this condition, and paid or accounted for at the time of completion.

8. The abstract of title to Lot 1 will commence with the indentures of lease, dated respectively the, &c. (being leases of Nos. —— respectively).

The abstract of title to Lot 2 will commence as to No. —, — Square, with the indenture of lease dated the — day of —, 18—, and as to No. —, — Square, with the indenture of lease, dated the — day of —, 187—.

The abstract of title to Lots 3, 4 and 5 respectively shall commence with an assignment of the terms of years and rents offered for sale, dated the — day of —, 18—. The underleases reserving to each lot respectively the rents offered for sale, will be produced for the purpose only of showing the respective amounts of the rents reserved, but the intermediate title to the reversionary interest from the grants of the respective underleases to the said indenture of assignment, dated the — day of —, 18—, shall not be investigated.

The abstract of title to Lot 6 shall commence with the indenture of lease, dated the — day of —, 18—.

The abstract of title to Lot 7 will commence with an indenture of underlease, dated the — day of —, 18—, creating the term of years offered for sale, viz., a term of years, less five days, from the — day of —, 18—.

54 FORMS OF CONDITIONS OF SALE.

The abstract of title to Lot 8 will commence with a conveyance to a purchaser, dated the — day of — 18—, and the abstract of title to Lot 9 with the will of —, dated the — day of —, 18—, and proved the — day of —, 18—, and the seisin in fee of the testator shall always be assumed, nor shall any requisition be founded thereon. And as to all the lots the purchaser shall not investigate the title prior to the commencement of the abstract.

9. As to Lots 3, 4 and 5, the houses Nos. — and —, in — Street, are subject to a rent of £— per annum, reserved by an old lease dated the — day of —, 18—; but it appears from a deed covenanting to be produced, that at the date of the assignment, dated the — day of —, 18— (with which the abstract commences), an indemnity was given against the said rent of £—, and no objection or requisition shall be made in respect thereof.

The houses Nos. —, —, —, in — Square, comprised in these lots, are also subject to a rent of £14 per annum, reserved by another old indenture dated the — day of —, 18—, and the said rent of £14 shall be apportioned amongst the said Lots 3, 4, and 5, as follows, that is to say: The purchaser of Lot 3 shall be subject, so far as regards No. —, to the apportioned rent of £5 per annum, and the purchaser of Lot 4 to the apportioned rent of £5 per annum, and the purchaser

of lot 5 to the apportioned rent of £4 per annum, but no legal apportionment of the said rent of £14 shall be required, but the same shall be carried out by mutual covenants, with powers of distress and entry, and, in case of dispute, the said apportionment shall be carried out in such manner as the Court or judge in this suit shall direct.

10. Lot 7 is subject to rents amounting together to £— per annum, reserved by a superior lease, dated the — day of —, 18—, but the lease of the — day of —, 18— (with which the abstract commences), contains a covenant of indemnity against such rents, and no objection or requisition shall be made in respect of the said rents.

11. The vendors (without prejudice to the preceding conditions) shall not be required to trace the title to the reversion expectant upon any lease offered for sale, or of any superior lease carved out of such reversion, or to show who, at the present time, is the immediate landlord, or who is any superior landlord.

12. As to the leasehold lots, wherever it is required by any lease that either any absolute assignment thereof should be prepared by the solicitor of the lessor, or that notice of the assignment should be given to the lessor within three months from the date thereof, it shall be assumed

56 FORMS OF CONDITIONS OF SALE.

without question that such requirement was in every case complied with, and no objection or requisition shall be made in respect of such requirement.

13. As to any lot stated in the particulars of sale to be free from land tax, the vendors shall not be required to give any evidence thereof other than a declaration (at the expense of the purchaser, if called for) that in the declarant's belief no land tax is payable.

14. The purchaser of any leasehold lot is not to object that the lease offered for sale is in fact an underlease, or that other premises not now offered for sale were comprised in the same lease, and the production of the last receipt for ground rent from the lessor, or reversioner, or agent (of which character of lessor, or reversioner, or agent no evidence shall be required) shall be conclusive evidence that all arrears of ground rent have been paid, and that the covenants and conditions in the said lease have been duly performed and observed on the part of the lessee, his executors, administrators or assigns, or that any breaches thereof have been waived; and where any breach shall be taken as waived under the present condition, no objection shall be made by reason of any continuing breach of the same or the like covenant or condition for the period subsequent to such last receipt for ground rent up to the completion of the purchase.

15. Every purchaser shall admit the identity of the property purchased by him with that comprised in the muniments offered by the vendors as the title to such property upon the evidence afforded by a comparison of the description in the particulars and muniments, and of a declaration to be made (if required) at the purchaser's expense, that the purchased property has been enjoyed according to the title for — years last past.

16. The sale being under an order of the Court, the parties beneficially interested shall not be required in that character to join in the conveyance, nor shall the purchaser require the production or any abstract of any deeds or documents relating solely to such beneficial interest, nor require any decree or order to be enrolled. The conveying parties will enter only into the usual trustees' covenant against incumbrances.

17. All the lots are sold subject to such tenancies, tenants' rights, rights of way and water, and other easements as may affect the same, and the purchaser shall be taken to have had notice thereof, though not expressly mentioned. Such of the lots as adjoin or are near to other lots or lot are also sold with or subject to such rights or privileges, in the nature of easements, as have usually been enjoyed along with the said lots respectively, or by the respective occupiers of the same, and

58 FORMS OF CONDITIONS OF SALE.

proper provisions shall be inserted in the conveyance of the respective lots for the purpose of securing the continuance of all such rights and privileges (the form of such provisions, in case of dispute, to be settled by the said judge); but nothing herein contained shall entitle the purchaser of any lot to require the concurrence in his conveyance of the purchaser of any other lot, or any covenant for the production of, or (except at his own expense) any attested or other copy of the conveyance of any other lot, nor shall the completion of the purchase of any lot be delayed on account of the non-sale, or any delay in the completion of the sale of any other lot or lots.

18. All supplemental abstracts, and all attested or other copies, abstracts, or extracts of or from any deeds, wills, proceedings in chancery, parochial or public registers, or other documents, and all evidence of deaths of parties, intestacy, or heirship, or other matters of pedigree, or of identity of parties or parcels, and generally all documentary and other evidence, and information which may be called for by the purchaser, whether required for verification or completion of the abstract, or delivery to the purchaser, or for any other purpose, must be had and obtained at the expense of the purchaser, and all documents (if any) required by the purchaser to be registered or stamped shall be so registered or stamped at the purchaser's expense, and if such registration

cannot now be effected, the want thereof shall form no objection to the title; and the tracing or getting in all outstanding legal estates, and the production of all documents not in the vendor's possession, wherever the same may be deposited, shall respectively be obtained at the purchaser's expense.

19. Documents of title relating exclusively to the premises sold (c) shall, if affecting one lot only, be delivered to the purchaser of such lot, but, if affecting more than one lot, shall be delivered to the purchaser of larger value, who shall enter into the usual covenants for production and giving copies thereof to the purchaser of other lots to which such documents relate, but the said documents shall be retained by the vendors until all the lots to which they relate have been sold.

20. Every lot is believed, and shall be taken to be, correctly described as to quantity or otherwise, and if any other error or misstatement shall appear to have been made in the above particulars, such error or misstatement is not to annul the sale, nor entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser, as the case may be, and the amount of such compensation is to be settled by the said judge at chambers.

60 FORMS OF CONDITIONS OF SALE.

21. If any purchaser shall not pay his purchase-money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said judge at chambers for the resale of the lot purchased by such purchaser, and for payment by him of the deficiency (if any) in the price which may be obtained upon such resale, and of all the costs and expenses which may be occasioned by such default.

Lastly. If any purchaser shall make any objection or requisition which the vendors shall be unable or unwilling for reasonable cause to remove or comply with, the vendors shall be at liberty, with the leave of the said judge, and notwithstanding any intermediate negotiation, or attempt to remove or comply with such objection or requisition, to cancel the contract, which shall thereupon be delivered up, and the deposit returned, without interest, and without costs on either side, and all documents delivered by either party to the other party shall be returned.

No. 6.—SALE OF SURPLUS PROPERTY OF A
DOCK AND RAILWAY COMPANY.

Conditions of Sale.

1. The highest bidder for each lot shall be purchaser, and if any dispute arise between two or more bidders in respect to any lot, such lot shall immediately be put up again, at the last undisputed bidding and resold (a).
2. No person shall advance at any bidding a less sum than shall be named by the auctioneer at the time of putting up each lot, nor retract any bidding when made (b).
3. Each purchaser shall give in his name and place of abode, and, immediately after the sale, pay to the [auctioneer or vendors' solicitor] a deposit of £— for every £100 of the purchase-money for each lot purchased by such purchaser (c), and sign the subjoined agreement, and shall complete his purchase and pay the remainder

(a) There is no reserved price in these conditions; if it is desired, the right for the vendors to bid at the sale should be expressly reserved. Ante, 24, (b).

(b) Ante, 24, (a).

(c) Ante, 25, (c).

of his purchase-money at the office of the vendors' solicitors, Messrs. ——, at ——, on the —— day of —— next; and on the completion of the several purchases, the purchasers shall be entitled to the possession of their respective lots, or an apportionment of the rents and profits thereof, as the case may be, from the —— day of —— next (*d*). All outgoings up to the —— day of —— instant shall be cleared by the vendors, but all outgoings accruing due subsequent to that date must be borne by the respective purchasers (*e*).

4. Upon payment of the remainder of the purchase-money at the time above mentioned, the vendors shall execute conveyances of the respective lots, as hereinbefore mentioned, but if the completion of any of the purchases shall from any cause whatever be delayed beyond the —— day of —— next, the respective purchasers whose purchases shall be so delayed, shall from that day pay interest at the rate of £5 per cent. per annum on the purchase-money remaining unpaid, until the day of actual completion, notwithstanding the purchase-money may have been unemployed, and notice thereof given to the vendors (*f*); but this

(*d*) *Ante*, 43, (*d*).

(*e*) An apportioned part of the current rent of leaseholds is an outgoing which a purchaser could claim to have allowed (*Lawes v. Gibson*, L. R., 1 Eq. 135); also rates and taxes, and sometimes a contribution towards repairs can be claimed (*Carrodus v. Sharp*, 20 Beav. 56).

(*f*) *Ante*, 26, (*f*).

provision as to the payment of interest shall be without prejudice to the rights or privileges of the vendors under the [13th] condition hereinafter contained.

5. The property comprised in the particulars being offered for sale by the —— Dock and Railway Company, copies of the acts of parliament relating to the said company shall be produced at the time of sale, but the purchaser shall not be entitled to require the delivery of such acts, nor enquire into, or question the extent of the powers of the company, either as purchasers or vendors, in respect of the property offered for sale, or their compliance with the requisitions of any act of parliament, and shall not raise any objection to the title, or require evidence on account of such requisitions or acts; it being the usual practice for the company to investigate the titles of all property purchased by them, and where such titles have been found unsatisfactory, to pay the purchase-money into the Bank of England in the manner prescribed by law, the vendors shall not be responsible for, nor required to produce or to furnish any evidence of title to any of the lots further than is shown by the instrument or assurance conveying the fee simple (or, where the property was copyhold, the customary fee) to, or vesting the same in the company, or their trustees, with such covenants for the production of deeds, and such subsequent conveyances or assurances (if any) relating to such

64 FORMS OF CONDITIONS OF SALE.

lots respectively as have since been executed; whether prior documents or acts shall or shall not appear to be referred to in such instruments or assurances, or any of them. And the respective purchasers shall take conveyances under the common seal of the company, with the concurrence, where necessary, of their trustees, and no objection shall be raised to the completion of the purchase by reason of the company being accountable to the Crown for payment of duties on passengers or otherwise, nor on the ground that any covenant for production of deeds does not run with the land. If any objection or requisition be delivered as aforesaid, whether a matter of title or conveyance, which the vendors are unable or unwilling to remove or comply with, they shall be at liberty, notwithstanding any attempts to remove or comply with the same, or any litigation, to rescind the contract and pay back the deposit without any interest, compensation or costs (g).

6. The vendors shall deliver abstracts of the conveyances to them of the fee simple or customary fee of the several lots as expressed in the last condition; but where there were any leasehold interests existing at the time of the purchase by the company, no abstract of the assignment or surrenders of such respective leasehold interests, nor any proof or evidence that the same have

(g) Ante, 27, (i).

been respectively executed or completed beyond the general statement now made that the same have been all respectively duly vested in the company, shall be required, and where the property sold was copyhold at the time of its purchase by the company, no evidence shall be required of its enfranchisement beyond the production of the deed of enfranchisement, which shall be conclusive of that fact; and no further or other evidence in support of the title shown by such abstract, or in proof of any recital or statement contained in any deed abstracted, shall be required beyond the production to the purchaser of the original deed abstracted, which, together with the deed of enfranchisement, when necessary, will be produced at the said office of Messrs. —— for that purpose, and at no other place, but the purchaser must bear the expense of such production and examination, and no purchaser shall be entitled to make any requisition upon, or objection to, the title deduced by such abstract, nor to any such deed of enfranchisement produced as hereinbefore mentioned, nor to call for, or inquire into, or make any requisition or objection to the title deduced by such abstract, nor to any such deed of enfranchisement produced as hereinbefore mentioned, nor to call for, or inquire into, or make any requisitions upon, or objection to, the title of the lord of the manor, or other person from or by whom such enfranchisement was, or purported to

66. FORMS OF CONDITIONS OF SALE.

be, taken or granted, but the said titles respectively shall, subject to the condition next following, be accepted and taken as absolutely satisfactory.

7. Notwithstanding the last condition, if any purchaser within seven days from the delivery of such limited abstract as is hereinbefore agreed to be delivered (but not afterwards, and in this respect time is to be deemed of the essence of the contract (*h*)) shall, for his satisfaction, require the production of an earlier title to all or any part of the premises purchased by him, an abstract of such earlier title, not exceeding in any case a period of thirty years prior to the purchase of such premises by the company, shall, if in the possession of the company, be furnished by them accordingly, and such of the title-deeds abstracted therein as shall be in the possession of the company shall be produced by the company to such purchaser for his inspection and examination, but the purchaser shall not be entitled to make any further requisition or any objection whatsoever to such earlier title, or in respect of the verification or support of the abstract thereof, and the whole expense attending the furnishing such additional abstract, the production of the deeds, and the examination thereof at the offices of the company's solicitors, shall be borne and paid by the purchaser requiring the same.

(*h*) Ante, 27, (*h*).

8. The vendors shall retain such of the deeds or documents, abstracted according to the above conditions, as shall be in their possession, and shall, at the request and costs of the respective purchasers, covenant to produce and give copies of the same (*i*).

9. All stipulations, provisions, or statements contained in the annexed particulars, or in the plan annexed thereto, in the nature of conditions or otherwise, and intended to bind purchasers at this sale, shall be equally binding on the purchasers as conditions, as if they were here repeated (*j*).

10. The conveyances to the respective purchasers shall be prepared by them respectively, at their own expense, and shall be left by them at the offices of the company's solicitors for execution, seven clear days before the day above fixed for completion ; and the vendors shall not be required to enter into any express or implied covenant or warranty in such conveyances, except a covenant

(*i*) It depends upon the property itself, and it must therefore be for the draughtsman to consider, whether this condition is of service, having regard to section 5 of clause 2 of the 37 & 38 Vict. c. 78.

(*j*) A condition referring to the particulars, like the above, is often of great convenience, especially when there are a number of lots which require draining or fencing, or are burdened with easements ; and see next condition.

68 FORMS OF CONDITIONS OF SALE.

that they have done no act to encumber the property, and such conveyances shall contain proper covenants on the part of the several purchasers for rendering the stipulations in the annexed particulars specially applicable to their several lots perpetually binding on them, their appointees, heirs and assigns; and such purchasers shall, if required by the vendors, at their own expense, approve and execute a duplicate of such conveyances, such duplicate to be prepared by and at the expense of the vendors.

11. The several lots being sold subject to any outgoings affecting the same respectively, such outgoings shall, when necessary, be apportioned at the expense of the purchasers of the several lots; and the vendors shall not be bound to procure, or bear, any part of the expense of causing legal effect to be given to any such apportionment. And where the property sold is stated in the particulars to be land tax redeemed, no purchaser shall be entitled to call for the certificate of such redemption, or any other evidence of the fact, beyond the statement to that effect contained in the particulars; nor make any objection to the title on the ground that no such evidence is forthcoming.

12. The lands shall be taken to be of freehold tenure, and to contain the respective quantities stated in the particulars, and if any mistake or

error shall have been made in the description, or shall appear in the particulars (except as to tenure or quantities), such mistake or error shall not annul the sale, but a compensation or equivalent shall be given or taken, as the case may require (*k*) ; such compensation or equivalent to be settled by two referees, or their umpire, to be appointed in manner following, viz. :—Each party within seven days after notice of such mistake, or error, or omission, to appoint one referee by writing ; and the referee so appointed shall, before they enter upon business, appoint an umpire, in writing ; and the decision of such referees, if they agree, or otherwise of their umpire, shall be final ; and if either party fail to appoint a referee within the time specified, the referee appointed by the other party may make a final and binding decision.

13. If any purchaser shall neglect or fail to comply with the above conditions, or any of them, his deposit-money shall be absolutely forfeited to the vendors, who shall be at full liberty to resell the lot or lots bought by such purchaser, either by public auction or private contract, subject to such stipulations and conditions as they may think fit, and all expenses incidental to such resale and any deficiency in price shall be recoverable from the defaulter (*l*) as and for liquidated damages ; and it

(*k*) Ante, 30, (*o*).

(*l*) Ante, 31, (*r*).

shall not be necessary previously to tender a conveyance to the purchaser.

MEMORANDUM OF CONTRACT OF SALE, dated, &c.,
[as ante, 32].

[*The contract should be made under common seal of
the company.*]]

MISCELLANEOUS CONDITIONS.

As to an UNREGISTERED WILL.

THE will of the said —, which is agreed to be the commencement of title to the freehold and leasehold premises situated in [*Middlesex, Yorkshire*], comprised in Lots — and —, was never registered; but as to the freehold portion, the same can now be registered at the expense of the purchaser requiring the same, and no objection shall be made or requisitions framed on the ground or by reason of its not having been previously registered; and as regards the leasehold portion of the said premises, the sale being by the devisees of the same under the said will, such leasehold premises shall not be required to be registered, nor shall any requisition or objection be made concerning the non-registration of the same (a).

SALE UNDER A POWER OF ATTORNEY.

The parties beneficially interested in the property comprised in Lot — are now resident in

(a) Post, 37 & 38 Vict. c. 78, s. 8.

[*India*], and the vendor is selling as their agent under a power of attorney given for that purpose. The concurrence of the parties beneficially interested shall not be required, and the purchaser shall assume that such power of attorney is a valid and existing power (*b*), and no objection or requisition shall be made to or concerning such power of attorney, or to the form, attestation, due execution or substance of it, or to any matter or thing connected therewith (*c*).

UNSTAMPED LEASE, &c.

The lease of Lot —, mentioned in the particulars, is unstamped, and the underlease, dated the — day of — 18 —, of Lot — is insufficiently stamped, [*but as the said lease expires on the — day of — next, and the said underlease is for a term of less than three years,*] no objection or requisition shall be made by reason or on account of such lease or underlease being unstamped or insufficiently stamped, nor shall the sale be in any way affected by the same. Some of the title

(*b*) A power of attorney can always be revoked unless it be given for a valuable consideration (*Smart v. Saunders*, 5 C. B. 895), or it would be revoked by the death of the person giving the power; therefore, when a deed is to be executed under a power, evidence is sure to be required that the power has not been revoked. Trustees and executors, however, are protected by 22 & 23 Vict. c. 35, s. 26.

(*c*) Various formalities are required in different colonies. See *Davidson's Con.* 3rd ed. vol. 1, page 424, n.

deeds to the freehold portion of the premises sold are unstamped; no objection or requisition shall be made on account thereof, but such deeds (if required) shall be stamped by and at the expense of the purchaser.

ARREARS OF RENT.

Each purchaser shall concur with the vendors in any proceeding which may be deemed necessary for the recovery of the rents due to the vendors at the time of the completion of the purchase, either by entry for distress or by action at law, at the option of the vendors; all such proceedings to be at the vendors' expense, and to be conducted by them or by their solicitors.

The proportion of the rent of any lot between the last rent-day and the day fixed for the completion shall be paid by the purchaser to the vendor at the time of completion.

AN ALLOTMENT OF COMMON.

The title as to the allotment of common attached to Lot — shall commence with the award sealed by the Inclosure Commissioners the — day of — 18 —, relating to the parish of —, whereby the said allotment was allotted to Sir — of —. The regularity and validity of such an award in all respects shall be assumed, and the award shall be taken to confer on the said

Sir — an indefeasible estate in fee simple in possession.

EXCHANGE UNDER INCLOSURE ACTS.

The title to [*the remaining portion of Lot —, comprising A. — R. — P. —*] shall commence with an order of exchange under the hands and seal of the Inclosure Commissioners for England and Wales, dated the — day of — 18 —, whereby the property was given to Mr. — of —, in exchange for lands given to Sir — Bart.; and the regularity and validity in all respects of such order of exchange shall be assumed, and the order shall be taken to confer on the said Mr. — an indefeasible title in fee simple in possession.

EXCEPTION OF MINERALS.

The minerals under those portions of the property which are hereinbefore mentioned to consist of allotments under Inclosure Acts, do not belong to the vendors, and are not included in the sale, the same having been reserved to the lord of the manor of —, who has power to work the same under the several Inclosure Acts, and the vendors shall not be required to furnish any further or other information respecting the said minerals or the lord's rights and powers over or in respect of the same.

APPENDIX.

37 & 38 VICT. c. 78.

*An Act to amend the Law of Vendor and Purchaser,
and further to simplify Title to Land.*

[7th August, 1874.]

WHEREAS it is expedient to facilitate the transfer of land by means of certain amendments in the law of vendor and purchaser :

Be it enacted, &c., as follows :

1. In the completion of any contract of sale of land made after the thirty-first day of December one thousand eight hundred and seventy-four, and subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; nevertheless earlier title than forty years may be required in cases similar to those in which earlier title than sixty years may now be required (a).

Forty years
substituted
for sixty
years as the
root of title.

(a) It was for some time a question whether or not forty years was the period the title required to be carried back under 3 & 4 Will. 4, c. 27, s. 17, instead of sixty years; but in the case of *Cooper v. Emery*, 1 Phil. 388, on appeal, the Lord Chancellor said: "It was supposed that by the operation of that act, it was not necessary that the title should be carried back, as formerly, to a period of sixty years, but that some shorter period would be proper. . . . I am of opinion that the statute does not introduce any new rule in this respect, and that to introduce any new rule shortening the period would

Rules for
regulating
obligations
and rights of
vendor and
purchaser.

2. In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary in the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules; that is to say,

First. Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold (b).

Second. Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions (c).

affect the security of titles." See also *Parr v. Lovegrove*, 4 Drew. 170; *Moulton v. Edmonds*, 1 De G., F. & J. 246.

Where the root of title offered is a recovery showing an entail, or an instrument in exercise of a power, the abstract must commence a step earlier, although such title extends back more than forty years. So will a document which throws doubt on a title, or a devise of real property, be bad, there being nothing to show that the property in question passed. (*Parr v. Lovegrove*, *Moulton v. Edmonds*, sup. See 37 & 38 Vict. c. 57, s. 5, and p. 84, n. (e).)

(b) The purchaser is not prevented from objecting to the title as bad if he discover a material defect in the lessor's title (*Lecoy v. Mogford*, 2 Jur., N. S. 1085; *Shepherd v. Keatley*, 1 C. M. & R. 117; *Waddell v. Wolfe*, L. R., 9 Q. B. 515), although he is under a condition that the lessor's title shall not be shown or inquired into (*Hume v. Bentley*, 5 De G. & S. 520; *Jones v. Clifford*, 3 Ch. D. 779).

(c) This clause does not extend to recitals in recitals, or to mere matters of inference (*Poppleton v. Buchanan*, *Buchanan v. Poppleton*, L. J., C. P. 210; 4 C. B., N. S. 20; 4 Jur., N. S. 414); and it would seem that a purchaser may require to be satisfied that the vendor has no better evidence (*Bird v. Fox*, 11 H. 4. 48). But a recital in a deed more than twenty years old that the vendor was seised in fee is sufficient evidence of the truth of that fact within the meaning of the act (*Bolton v. School Board for London*, 7 Ch. D. 766).

Third. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents (*d*).

Fourth. Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

Fifth. Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.

3. Trustees who are either vendors or purchasers may sell or buy without excluding the application of the second section of this act (*e*).

Trustees
may sell,
&c. not-
withstanding
rules.

(*d*) This clause has a most extensive application, as the purchaser of an estate, or of any part of an estate, has, in almost every instance, an equitable right to the production of the title deeds thereto. Thus where the owner of an estate sold part of it and retained the title deeds, the purchaser could enforce their production upon a re-sale (*Fain v. Ayers*, 2 Sim. & St. 533); so where there are several estates created by the same deed, the purchaser of any one of them can enforce the production of the deed (see *Dart's V. & P.* 376 (4th ed.)). A remainderman (*Lord Lempster v. Lord Pomfret*, 1 Dick. 238; *Davis v. Lord Dysart*, 20 Beav. 405; 21 Beav. 124), or the owner of an undivided share (*Burton v. Neville*, 2 Cox, 242), can demand the production of their title (*Garner v. Hannington*, 22 Beav. 627); but a mortgagee cannot be compelled to produce without his mortgage first being satisfied (*Dart's V. & P.* 377 (4th ed.)).

(*e*) Trustees are not justified in selling under depreciatory special conditions (*Marriott v. Anchor Reversionary Co.*, 3 De G., F. & J. 177; *Hobson v. Bell*, 2 Beav. 17), but at the same time they should carefully guard against any defect in the title by suitable conditions (*Peers v. Ceeleg*, 15 Beav. 209). Thus they should fix a reserved price (*Re Peyton's Settlement*, 30 Beav. 252), and stipulate that in case any objection be insisted on which they should be unable to remove, they may rescind the contract (*Falkner v. Equitable Interest Co.*, 4 Drew. 352; ante, p. 19).

Legal personal representative may convey legal estate of mortgaged property.

Bare legal estate in fee simple to vest in executor or administrator.

Married woman who is a bare trustee may convey, &c.

4. The legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust (*f*).

5. Upon the death of a bare trustee, &c. (*g*).

6. When any freehold or copyhold hereditament shall be vested in a married woman as a bare trustee,

(*f*) A mortgage in fee vests the legal estate in the mortgagee, and such estate would go to his heir or devisee, though the mortgage being merely a security for a debt, his personal representatives would be entitled to the money secured thereby (*Thornborough v. Baker*, 1 Ch. Ca. 283). The legal estate is not vested in the legal personal representative by this section, but merely a power is given to him to convey on the receipt of all sums secured by the mortgage; he has no right to transfer the mortgage (*In re Brooke's Mortgage*, 25 W. R. 841).

(*g*) Repealed by 38 & 39 Vict. c. 87, s. 48, which enacts: "Upon the death of a bare trustee intestate as to any corporeal or incorporeal hereditament, of which such trustee was seized in fee simple, such hereditament shall vest, like a chattel real, in the legal personal representative, from time to time, of such trustee."

A person to whose fiduciary office no duties were originally attached, or who, although such duties were originally attached to his office would, on the requisition of his *cestuis que trust*, be compellable in equity to convey the estate to them, or by their direction, is a bare trustee within the meaning of the 48th section of the Lands Clauses Act, 1875 (per V.-C. Hall, in *Christie v. Ovington*, 1 Ch. D. 279). This case, however, is commented on by Jessel, M. R., who says: "I cannot imagine a trustee who has no duties. He must be a trustee for somebody. The very notion of a trustee is, that there are some duties attached to the office. I suppose it means 'active duties' in the sense of trusts to sell, or lease, or something of that sort. . . . I should have thought it was the universal rule that where *cestuis que trust* all agree, and are, of course, competent to request, then, on their requisition, a trustee must convey. . . . I should have thought that a 'bare trustee' or a 'naked trustee' meant a trustee without any beneficial interest" (*Morgan v. Swansea Urban Sanitary Authority*, 9 Ch. D. 582).

she may convey or surrender the same as if she were a feme sole.

7. After the commencement of this act, &c. (h).

8. Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law (i).

9. A vendor or purchaser of real or leasehold estate in England, or their representatives respectively, may at any time or times and from time to time apply in a summary way to a judge of the Court of Chancery in England in chambers, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract, (not being a question affecting the existence or validity of the contract,) and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom

Protection
and priority
by legal
estates and
tacking
not to be
allowed.

Non-regis-
tration of
will in Mid-
dlesex, &c.
cured in
certain
cases.

Vendor or
purchaser
may obtain
decision of
judge in
chambers as
to requi-
sitions or
objections,
or compen-
sation, &c.

(h) Repealed by 38 & 39 Vict. c. 87, s. 129.

(i) This section remedies a very serious inconvenience. If a will devising land in Middlesex or Yorkshire were not registered within six months after the death of the testator, a registered assurance from the testator's heir would have prevailed against the will. Copyholds do not seem to come within the operation of 7 Ann. c. 20, but a lease of copyholds would apparently require to be registered just the same as if it were a lease of freeholds (Sugd. V. & P., 14th ed. 732). Leases at rack rents, and also leases not exceeding twenty-one years, when the premises demised are actually occupied by the tenant, do not require registration, but it is a nice question whether or not a bequest of valuable leaseholds must not be registered to provide against any unregistered conveyance made by the testator during his life. This section only refers to freeholds, and therefore must not be relied on in framing conditions for the sale of leaseholds (*ante*, p. 71).

all or any of the costs of and incident to the application shall be borne and paid (k).

A vendor or purchaser of real or leasehold estate in Ireland, or their representatives respectively, may in like manner and for the same purpose apply to a judge of the Court of Chancery in Ireland, and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

Extent of act. 10. This act shall not apply to Scotland, and may be cited as the Vendor and Purchaser Act, 1874.

(k) The purchaser of a farm, consisting in part of 400 acres of heath land, took the objection that a title was not shown to the soil of the heath land, but only to rights of pasturage over it. The vendors took out a summons under this clause, asking that it might be declared that the purchaser's objections and requisitions were sufficiently answered. Affidavits were filed on both sides, and the deponents were cross-examined. The Master of the Rolls rejected the affidavits and cross-examination, on the ground that evidence by affidavit upon requisitions as to title under the act, ought not to be given unless required by the judge:—Held, by the Court of Appeal, that the evidence ought to have been admitted, for that, on a proceeding under this act, the parties are in the same position as they would have been under a reference as to title in a suit for specific performance (*In re Burroughs, Lynn and Sexton*, 5 Ch. D. 601).

37 & 38 VICT. c. 57.

An Act for the further Limitation of Actions and Suits relating to Real Property. [7th August, 1874.]

WHEREAS it is expedient further to limit the times within which actions or suits may be brought for the recovery of land or rent, and of charges thereon :

Be it enacted, &c. :

1. After the commencement of this act no person shall make an entry or distress, or bring an action or suit, to recover any land or rent, but within twelve years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to the person making or bringing the same (a).

No land or
rent to be
recovered
but within
12 years
after the
right of ac-
tion accrued.

(a) This section only applies when the land in question has been for twelve years out of the claimant's possession, in the legal sense of the term. Thus, during the continuance of a lease the possession is in the landlord, even though no rent be paid (*Doe d. Davey v. Oxenham*, 7 M. & W. 131). The land also must have been in the possession of someone else during that time; thus, where the husband of a lessor had been in possession for eighteen years, and the lessor after the death of her husband held possession for thirteen years more, there being a son, she was unable to maintain an action of ejectment against the mortgagee of the original owner (*Doe v. Bernard*, 18 L. J., Q. B. 306), although she might have defended one (*Asher v. Whitlock*, L. R., 1 Q. B. 1), and indeed she might maintain ejectment against any one save the lawful owner (*Doe v. Dyeball*, Mood. & M. 346). The rent spoken of in the above section is not the ordinary payments by a tenant to a landlord, but means an estate in the land.

Provision
for case of
future
estates.

2. A right to make an entry or distress, or to bring an action or suit, to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder, or other future estate or interest, at the time at which the same shall have become an estate or interest in possession, by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof or such rent shall have been received (*b*), notwithstanding the person claiming such land or rent, or some person through whom he claims, shall at any time previously to the creation of the estate or estates which shall have determined, have been in the possession or receipt of the profits of such land, or in receipt of such rent: But if the person last entitled to any particular estate on which any future estate or interest was expectant shall not have been in the possession or receipt of the profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such action or suit shall be brought, by any person becoming entitled in possession to a future estate or interest, but within twelve years next after the time when the right to make an entry or distress, or to bring an action or suit, for the recovery of such land or rent, shall have first accrued to the person whose interest shall have so determined, or within six years next after the time when the estate of the person becoming entitled in possession shall have become vested in possession, whichever of those two periods shall be the longer; and if the right of any such person to make such entry or distress, or to bring any such action or suit,

Time limited
to six years
when person
entitled to
the particu-
lar estate
out of pos-
session, &c.

(*b*) It will be observed that time does not begin to run against the reversioner until the estate is absolutely vested in possession. Therefore, if a forfeiture is incurred by the preceding tenant for life, or in tail, and it be not taken advantage of, the preceding estate is not determined, and the right to bring the action does not accrue within the meaning of the statute. See 3 & 4 Will. 4, c. 27, s. 4; *Kemp v. Westbrook*, 1 Ves. sen. 278.

shall have been barred under this act, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will or settlement, executed or taking effect after the time when a right to make an entry or distress, or to bring an action or suit, for the recovery of such land or rent, shall have first accrued to the owner of the particular estate whose interest shall have so determined as aforesaid, shall make any such entry or distress, or bring any such action or suit, to recover such land or rent.

3. If at the time at which the right of any person to make an entry or distress, or to bring an action or suit, to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned, (that is to say,) infancy, coverture, idiocy, lunacy, or unsoundness of mind, then such person, or the person claiming through him, may, notwithstanding the period of twelve years, or six years, (as the case may be,) hereinbefore limited shall have expired, make an entry or distress, or bring an action or suit, to recover such land or rent, at any time within six years next after the time at which the person to whom such right shall first have accrued shall have ceased to be under any such disability, or shall have died (whichever of those two events shall have first happened) (c).

In cases of
infancy,
coverture,
or lunacy
at the time
when the
right of ac-
tion accrues,
then six
years to be
allowed
from the
termination
of the dis-
ability or
previous
death.

(c) In this section, and in sect. 4, absence beyond the seas is not accounted a disability, as was formerly the case; the idea being that by reason of increased facilities of communication it is one no longer. It is questionable whether a step further in this direction might not well have been taken. By 33 & 34 Vict. c. 97, s. 11, a married woman may maintain an action for any property declared by that act to be, or settled before marriage as, her separate estate (see *Hancocks v. Lablache*, 3 C. P. D. 197); and as to any other property not included in this very sweeping category, it is expressly enacted by the Judicature Act, 1875, O. XVI., r. 8, that she may sue by a next friend, or, by leave of a judge, without either husband or next friend. She can sue *in forma pauperis* (*Crouch v. Waller*, 4 De

No time to
be allowed
for absence
beyond seas.

4. The time within which any such entry may be made, or any such action or suit may be brought as aforesaid, shall not in any case after the commencement of this act be extended or enlarged by reason of the absence beyond seas during all or any part of that time of the person having the right to make such entry, or to bring such action or suit, or of any person through whom he claims (*d*).

Thirty years
utmost al-
lowance for
disabilities.

5. No entry, distress, action or suit shall be made or brought by any person who at the time at which his right to make any entry or distress, or to bring an action or suit, to recover any land or rent, shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within thirty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such thirty years, or although the term of six years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired (*e*).

In case of
possession
under an
assurance by
a tenant in

6. When a tenant in tail of any land or rent shall have made an assurance thereof which shall not operate to bar the estate or estates to take effect

G. & J. 43), or apply when she has obtained a protection order under 20 & 21 Vict. c. 86, s. 21, without a next friend.

No disability makes any difference whatever, unless it exists when the right of action first accrues.

(*d*) See 3 & 4 Will. 4, c. 27, s. 16, and note (*c*), *supra*, 83.

(*e*) Thirty years is the utmost time given to persons under disabilities within which to bring an action for the recovery of land, nevertheless, a forty years' title (37 & 38 Vict. c. 78, s. 1), may still be demanded as between vendor and purchaser. Although twelve years be the time allowed for the recovery of an estate, extended sometimes, in the case of disabilities, to thirty years, yet it must not be forgotten that this means twelve years from the time when the right to recover the estate first accrued, which, in the case of a remainderman, may not occur until long after the period of thirty years has expired. See 37 & 38 Vict. c. 78, s. 1, (*a*), and p. 29, (*m*).

after or in defeasance of his estate tail, and any person shall by virtue of such assurance at the time of the execution thereof, or at any time afterwards, be in possession or receipt of the profits of such land, or in the receipt of such rent, and the same person or any other person whosoever (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail) shall continue or be in such possession or receipt for the period of twelve years next after the commencement of the time at which such assurance, if it had then been executed by such tenant in tail, or the person who would have been entitled to his estate tail if such assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates as aforesaid, then, at the expiration of such period of twelve years, such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after or in defeasance of such estate tail (f).

7. When a mortgagee shall have obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring any action or suit to redeem the mortgage but within twelve years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in

tail, which
shall not bar
the remain-
ders, they
shall be
barred at
the end of
12 years
after that
period at
which the
assurance, if
then exe-
cuted, would
have barred
them.

Mortgagor
to be barred
at end of 12
years from
the time
when the
mortgagee
took posses-
sion or from
the last
written ac-
knowledg-
ment.

(f) It should be noticed that the object of this section is not to bar the issue in tail, but the remaindermen (*Penny v. Allen*, 7 De G., M. & G. 426), and to give effect to assurances, which, though effectual to bar the issue of the tenant in tail, fail to bar those entitled in remainder. Therefore, if the assurances be not good against the issue in tail, either on account of not having been enrolled or otherwise (*Gibbons v. Snape*, 1 De G., J. & S. 621), the section has no application (*Morgan v. Morgan*, L. R., 10 Eq. 99). Apparently issue in tail are barred by the operation of sect. 1 (*Earl of Abergavenny v. Brace*, L. R., 7 Ex. 145).

writing of the title of the mortgagor, or of his right to redemption, shall have been given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee or the person claiming through him; and in such case no such action or suit shall be brought but within twelve years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given; and when there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons; but where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the

value of the whole of the land or rent comprised in the mortgage (g).

8. No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent; and in such case no such action or suit or proceeding shall be brought but within twelve years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one, was given (h).

Money charged upon land and legacies to be deemed satisfied at the end of 12 years if no interest paid nor acknowledgment given in writing in the meantime.

9. From and after the commencement of this act all the provisions of the act passed in the session of the third and fourth years of the reign of his late Majesty King William the Fourth, chapter twenty-seven, except those contained in the several sections thereof next hereinafter mentioned, shall remain in full force, and shall be construed together with this act, and shall take effect as if the provisions hereinbefore contained were substituted in such act for the provisions contained in the sections thereof numbered two, five, sixteen, seventeen, twenty-three, twenty-eight, and forty respectively (which several sections, from and after the commencement of this act, shall be repealed), and as if the term of six years had

Act to be read with 3 & 4 Will. 4, c. 27, of which certain parts are repealed, and other parts to be read in reference to alteration by this act.

(g) See 7 Will. 4 & 1 Vict. c. 28.

(h) Infants could not give a discharge, so the section does not apply to them; neither does it apply when there are prior charges, such as mortgages (*Faulkner v. Daniel*, 3 Ha. 199, 212), because it is not certain that the legacies are to be paid.

7 Will. 4 &
1 Vict. c. 28,
to be read
with this
act.

been mentioned, instead of the term of ten years, in the section of the said act numbered eighteen, and the period of twelve years had been mentioned in the said section eighteen instead of the period of twenty years; and the provisions of the act passed in the session of the seventh year of the reign of his late Majesty King William the Fourth, and the first year of the reign of her present Majesty, chapter twenty-eight, shall remain in full force, and be construed together with this act, as if the period of twelve years had been therein mentioned instead of the period of twenty years.

Time for
recovering
charges and
arrears of
interest not
to be en-
larged by
express
trusts for
raising
same.

10. After the commencement of this act no action, suit, or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, at law or in equity, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust (i).

Short title.

11. This act may be cited as the "Real Property Limitation Act, 1874."

Commence-
ment of Act.

12. This act shall commence and come into operation on the first day of January one thousand eight hundred and seventy-nine.

(i) By 3 & 4 Will. 4, c. 27, s. 25, it is provided that, in the case of an express trust the right to recover should not be deemed to have accrued until a conveyance had been made to a purchaser for a valuable consideration, and then only as against such purchaser. It was held, therefore, in the case of *Hicks v. Sallit*, 3 De G., M. & G. 782, that sect. 42, limiting the arrears of interest recoverable to six years, would not apply, and that the plaintiff was entitled to an account and arrears from the time when his title first accrued; though where a very long time had elapsed, equity, while enforcing the trust, would sometimes apply as to the interest the principle of the statute (*Thomson v. Eastwood*, 2 App. Cas. 215).

INDEX.

ABSENCE,

beyond the seas no disability, 83.

ABSTRACT. *See title* TIME.

means a perfect abstract, 25.

AGREEMENT,

to sell, implies with a good title, 15.

the fee simple, 10.

free from incumbrances, 11.

AUCTIONEER,

vendor bound by acts of, 16.

cannot delegate his authority, *ib.*

cannot receive the purchase money, *ib.*

liability of, *ib.*

must not part with deposit, 25.

BIDDINGS,

retraction of, 24.

right to bid reserved, *ib.*

COMPENSATION,

clause for, when it does apply, 30.

when it does not apply, *ib.*

right to, cannot be excluded, *ib.*

CONDITIONS,

- by whom prepared, 14.
- object of, 1, 2.
- how construed, 14.
- any ambiguity in favour of purchaser, 15.
- when not bona fide, *ib.*
- special conditions, 35.

CONVEYANCE,

- right to separate conveyances, 44.

COVENANT. *See title LEASE.*

- breaches of, 44.

DAMAGES. *See titles DEPOSIT, FORFEITURE.***DEED.** *See title TITLE.*

- suppression of, with intent to defraud, a misdemeanor, 15

DEFECTS,

- patent, 8.
- latent, 9.

DEPOSIT. *See title FORFEITURE.*

- is part payment, 24.
- not required in sales by the court, 50.
- investment of, 25.

DISABILITIES. *See title POSSESSION.*

- what are, 83.
- married women, *ib.*
- infants, 83, 87.

FORFEITURE,

- of deposit, 31.
- on breach of covenant in lease, 40.

IDENTITY,

 vendor bound to identify, 29.
 where the descriptions in the title deeds vary, *ib.*

INTEREST, 25.**LEASE. *See title FORFEITURE.***

 notice of, when notice of contents, 12.
 purchaser not bound to find out terms of, 13.

LEGAL ESTATE, 28, 78.**MARRIED WOMAN,**

 actions by, 83.

MORTGAGE. *See title LEGAL ESTATE.***OUTGOINGS,**

 what are, 62.
 current rent, *ib.*
 rates and taxes, *ib.*
 repairs sometimes, *ib.*

PAROL EVIDENCE,

 not received on behalf of a plaintiff, whether vendor or
 purchaser, 17.
 not even to explain an ambiguity, *ib.*
 when it will be received, 18.
 may be used as a defense, *ib.*

PARTICULARS,

 object of, 4.
 construction of, *ib.*
 by whom prepared, 5.
 must be unambiguous, *ib.*
 ambiguity fatal, *ib.*
 when not fatal, 6.
 in the absence of fraud, no redress after conveyance, 7.
 how to alter, 18.

PLAN,

effect of incorrect, 10.

POSSESSION,

not necessarily personal occupation, 25.

but it means it usually, *ib.*

title by, 81, 84.

must be continuous, 81.

when time commences to run, 82.

RECITALS,

in deeds more than twenty years old sufficient evidence, 76.

not recitals in recitals, *ib.*

REGISTRATION,

when required, 79.

effect of non-registration, *ib.*

RESCIND,

what necessary to constitute a right to, 28.

where no title whatever, *ib.*

SOLICITOR,

same solicitor should not be employed, 16.

SUMMONS,

under 37 & 38 Vict. c. 78, s. 9..79.

TIME,

made expressly the essence of the contract, 27.

TITLE,

'forty years', may be required, 29, 75.

when more may be, 79.

inability to produce title deeds, 77.

right to production, *ib.*

who may require, *ib.*

purchaser of part of an estate, *ib.*

where several estates created by the same deed, *ib.*

a remainderman, *ib.*

owner of an undivided share, *ib.*

TRUSTEE,

sales by,

- power of sale, how exercised, 19.
 - when re-investment directed, *ib.*
 - when absolute trust for, *ib.*
 - "to sell with all convenient speed," 20.
 - with consent of tenant for life, 21.
 - what conditions should be used, 22, 27.
- under a power of attorney, 72.
- "a bare trustee," 78.

VENDOR,

should be named, 32.

what sufficient description, *ib.*

what insufficient description, *ib.*

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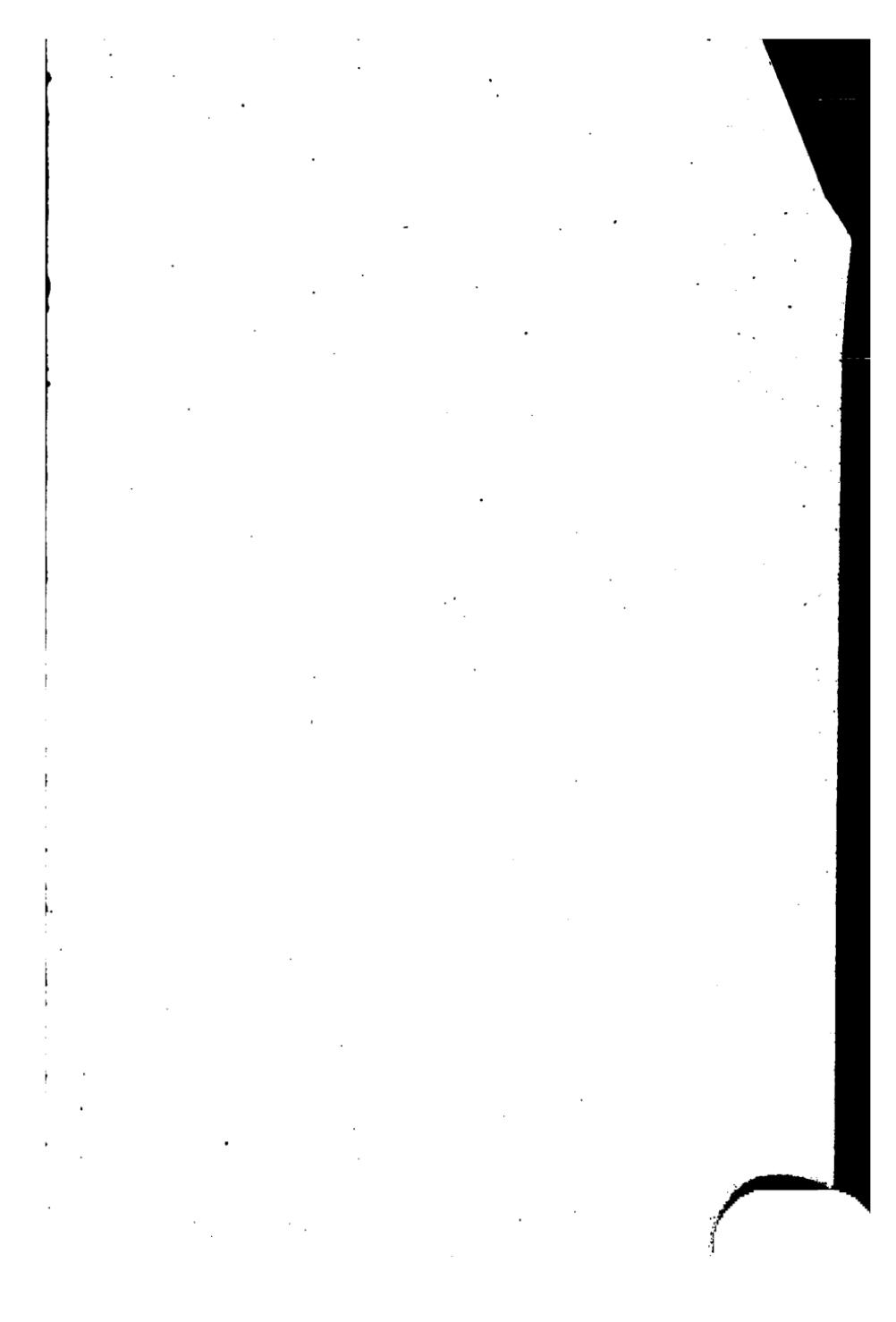
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